7-31-92
Vol. 57 No. 148

federal register

Friday
July 31, 1992

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

7-31-92
Vol. 57 No. 148
Pages 33857-34060

federal register

Friday
July 31, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

Presidential Documents

Title 3—

The President

Proclamation 6462 of July 28, 1992

Helsinki Human Rights Day, 1992

By the President of the United States of America

A Proclamation

Less than two decades ago, on August 1, 1975, the United States and Canada joined 33 European nations in adopting the Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE). Affirming the "close link between peace and security in Europe and in the world as a whole," signatories to the declaration agreed to respect human rights and fundamental freedoms, "including freedom of thought, conscience, religion, or belief, for all without distinction as to race, sex, language or religion." Participating states recognized respect for human rights as "an essential factor" for the attainment of peace, justice, and cooperation among nations and agreed to settle disputes among themselves peacefully and on the basis of international law. This year the CSCE Summit, the first held in Helsinki since 1975, offered an historic setting to renew United States support for a strong Euro-Atlantic partnership based on shared goals and values.

Since its inception, the CSCE has championed human rights and democratic values. Originally set forth at Helsinki in 1975, these standards have been strengthened and reaffirmed by the Copenhagen, Geneva, and Moscow CSCE documents and by the 1990 Charter of Paris for a New Europe, through which members added to existing CSCE principles new and sweeping commitments to political pluralism and the rule of law. The Charter of Paris also established new CSCE institutions, such as the Conflict Prevention Center in Vienna, to strengthen the ability of the Conference to promote the peaceful resolution of disputes and the development of stable, democratic governments.

During the past two years, the Conference has evolved further to assist in the task of managing the dramatic changes that have been brought about in the CSCE community by the collapse of communism and the end of the Cold War. In addition to expanding its activities and institutions, as well as its mechanisms for fostering international dialogue and cooperation, the CSCE has welcomed new members from among the emerging states of Central and Eastern Europe and the 12 states that replaced the Soviet Union. We welcome these new CSCE participants and the commitment to human rights that their membership signifies.

While great advances have been made overall in promoting human rights, especially since the democratic revolutions that swept Europe in 1989, today some states are making only minimal progress while others are sliding backward into the mire of ethnic conflicts. Thus, this year's Helsinki Summit emphasized that political stability and lasting freedom can be based only on genuine respect for human rights, which forms the basis of the CSCE concept of international security and cooperation. At Helsinki, participating states broke new ground in enhancing the CSCE's ability to promote human rights, to manage change, and to prevent conflicts. In addition to establishing the office of a CSCE High Commissioner on National Minorities, which will assist in the investigation and prevention of conflicts arising from ethnic or minority tensions, the 1992 Helsinki document provides for an expanded Office of Democratic Institutions and Human Rights in Warsaw. To promote the nonviolent resolution of disputes, the document also envisages formal peacekeeping operations in support of political solutions, either by CSCE countries

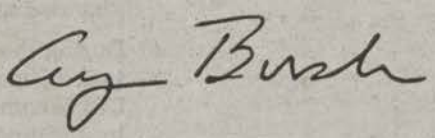
directly or with the support of other international organizations such as NATO and the Western European Union (WEU).

Today the Euro-Atlantic community continues to be challenged by the legacy of the Cold War. The peoples of Europe's emerging states face many difficulties as they strive to overcome deeply rooted political and economic problems imposed by decades of Soviet repression and communist rule. Yet, during this period of great change, the principles set forth in the 1975 Helsinki Final Act and reaffirmed at follow-on meetings of the CSCE continue to offer a steady guide to peaceful, cooperative relations among states and to the just and democratic conduct of governments.

In recognition of the contributions of the CSCE toward the expansion of human rights and toward the development of a strong Euro-Atlantic partnership for freedom, the Congress, by Senate Joint Resolution 310, has designated August 1, 1992, as "Helsinki Human Rights Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1992, as Helsinki Human Rights Day and reaffirm the United States commitment to upholding human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs and activities, let us remember all those courageous individuals and groups of individuals who have made tremendous sacrifices to secure the freedoms that we enjoy. The God-given and inalienable rights affirmed in our Declaration of Independence and guaranteed by our Constitution are rights that many people in the world still struggle to obtain. Building on the foundation that was laid at Helsinki 17 years ago and that was fortified there last month, let us recommit ourselves to making peace and liberty the common heritage of all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-18338
Filed 7-29-92; 4:04 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204 and 245

[INS No. 1450-91]

RIN 1115-AD05

Special Immigrant Status; Aliens Who Have Served Honorably (or Are Enlisted To Serve) in the Armed Forces of the United States for at Least 12 Years

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of the "Armed Forces Immigration Adjustment Act of 1991" is to provide special immigrant status to a limited number of foreign nationals who have served honorably on active duty status in the Armed Forces of the United States. Congress enacted this legislation to provide eligible enlistees/veterans (and their spouses and children) with an opportunity to become lawful permanent resident aliens of the United States and thus become immediately eligible to apply for Naturalization as United States citizens. The Act contains its own numerical limitation scheme for these special immigrants, and adds a new subsection to section 245 of the Immigration and Nationality Act to accommodate their adjustment of status to that of aliens lawfully admitted for permanent residence. This regulation is necessary to recognize the patriotism and valor of aliens who, by virtue of their military service, have clearly demonstrated a commitment to support and defend the Constitution and laws of the United States.

DATES: This interim rule is effective on July 31, 1992. Written comments must be received on or before August 31, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Divisions, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1450-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Susan A. Dugas, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW.; room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Public Law 102-110, enacted on October 1, 1991, amends the Immigration and Nationality Act to provide for special immigrant status for certain aliens who, pursuant to a bilateral international agreement or treaty, have served honorably (or are enlisted to serve) in the Armed Forces of the United States after October 15, 1978, and who apply for such status. This law further requires that such service be after lawful enlistment outside the United States and be for a period of twelve years or, alternatively, for six years if the individual has reenlisted for an additional six years. Nationals of the Philippines, the Federated States of Micronesia, and the Republic of the Marshall Islands are allowed to enlist in the United States Armed Forces each year, however, in the case of the latter two independent states, few of their nationals will have enlisted outside the United States, while most natives of the Philippines have to date enlisted in the Philippines. With the exception of wartime service under certain conditions, previous United States immigration law provided no special benefits for foreign nationals who enlisted in the Armed Forces of the United States. As a result, these individuals could not become United States citizens, were denied entry into positions that require access to classified information, and were denied entry into military officer programs.

The desire of Congress to recognize United States military service members has been historically demonstrated by the provisions of special naturalization benefits based upon military service. The recent implementation of Public Law 101-249, Posthumous Citizenship for Active Duty Service Act of 1990, clearly demonstrates the continuing desire of Congress to provide special recognition and benefits to aliens who serve or have served in the Armed Forces of the United States.

The grant of special immigrant classification pursuant to Public Law 102-110 allows the intended beneficiaries of section 101(a)(27)(K) of the Immigration and Nationality Act (the Act) to become eligible for an immigrant visa or adjustment of status to that of aliens lawfully admitted for residence. Generally, an applicant for such benefits must have served honorably for the required twelve years of active military duty and at least some part of that service must have occurred after October 15, 1978. However, an alien on active duty status at the time of seeking special immigrant status under section 101(a)(27)(K) of the Act, and who has served a total of six years of active duty, needs only to establish, to the satisfaction of the Immigration and Naturalization Service (Service), that he or she has reenlisted to incur a total active duty service obligation of at least twelve years. Public Law 102-110 also requires that the executive department of the Armed Forces under which the immigrant serves or served must have recommended the granting of special immigrant status to the immigrant.

This rule includes application procedures for the special immigrant including submission of evidence of past service or reenlistment, and the written recommendation of special immigrant status by the executive department of the military, to be submitted to the Service with Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. In order to make filing for benefits under section 101(a)(27)(K) of the Act as efficient and expeditious as possible, Service procedures will require that the alien obtain the certification of service and recommendation for special immigrant status directly from the executive department under which he or she served or is serving, before filing Form I-360 with the Service.

Allocation of Visa Numbers

Once an alien is granted special immigrant status under section 101(a)(27)(K) of the Act, his or her visa issuance is charged to the allocation of

employment-based fourth preference visas provided by section 203(b)(4) of the Act for the following year.

Numerical Limitations

Public Law 102–110 contains its own unique numerical limitation scheme for this category of special immigrant and requires that existing immigration ceilings for a given year be reduced by one third of the number of aliens granted special immigrant status under Public Law 102–110 during the previous year. The statute limits the number of military special immigrants granted visas or adjustment to permanent residency to a total of 2,000 per year for natives of countries which have a numerical limitation treaty or agreement with the United States allowing for enlistment of their nonresident nationals into the Armed Forces of the United States and to a total of 100 annually for countries without such a treaty. These limits do not apply to spouses and children of these special immigrants.

Exemptions From Certain Numerical Limitations

Persons who qualify for special immigrant status under section 101(a)(27)(K) of the Act as of the date of enactment of Public Law 102–110 (October 1, 1991) are exempt from separate numerical limitations of 2,000 (for countries with a treaty, namely, the Philippines) and 100 in all other cases. Persons not eligible as of the date of enactment are charged to both the country and the special immigrant numerical limits by reducing the numbers of employment-based visas and per country levels for a given year for natives of the foreign state. For countries "at ceiling", there are special rules for reductions in the number of employment-based immigrant visas for natives of the foreign state.

Public Law 102–110 specifically provides that spouses and children of eligible applicants be accorded special immigrant classification if they are "accompanying or following to join" special immigrants. This rule sets forth specific procedures for derivative beneficiaries (eligible spouses and children) under section 101(a)(27)(K) of the Act to apply for lawful permanent resident status, whether they are in the United States or outside the United States.

Pursuant to current immigration law, members of the Armed Forces of the United States who are travelling under official orders are not subject to inspection when entering the United States. This creates a problem for anyone seeking to adjust status to that of a lawful permanent resident under section 245 of the Act (which requires that the adjustment applicant must have been inspected and admitted, or paroled). In order to facilitate adjustment of status for Armed Forces special immigrants, Congress amended section 245 of the Act to provide that a special immigrant described in section 101(a)(27)(K) "shall be deemed, for the purposes of subsection (a), to have been paroled into the United States". Furthermore, although section 245(c) generally prohibits the adjustment of status of aliens who have failed to continuously maintain lawful nonimmigrant status or who have been employed without authorization in the United States, Armed Forces special immigrants (and their spouses and children) are exempt from this provision. Once the spouse or child of an Armed Forces special immigrant is granted special immigrant classification, and desires to adjust status in the United States, his or her application for adjustment will be adjudicated in accordance with the provisions of 8 CFR part 245 and new subsection 245(g) of the Act.

This rule also provides for automatic revocation of a petition to classify special immigrant classification under the general provisions of section 205 of the Act. Such revocation will occur if the special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge, prior to entering the United States with an immigrant visa or to approval of an application for adjustment of status to that of a lawful permanent resident. This provision is necessary in order to ensure that the alien continues to meet the qualifications set forth in the Act at the time the Armed Forces special immigrant is admitted to the United States for lawful permanent residence. If the Service is made aware by formal notification from the appropriate executive department that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete the total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is one of the classes of deportable aliens specified in section 241 of the Act. The Service may also pursue rescission proceedings under section 246 of the Act if the military special immigrant was not in fact eligible for adjustment of status.

If a special immigrant who obtains benefits under section 101(a)(27)(K) of the Act is granted status as an alien lawfully admitted for permanent residence, and meets the requirements of section 328 or 329 of the Act, he or she may file immediately for naturalization. The Service anticipates that the majority of section 101(a)(27)(K) special immigrants who obtain permanent residence will benefit by becoming eligible to apply for naturalization immediately. This rule includes instructions for the Service officer who conducts the adjustment of status interview to advise an applicant of his or her eligibility for immediate naturalization, if *prima facie* eligibility under section 328 or 329 of the Act is demonstrated.

An applicant may appeal the district director's decision to deny a petition for special immigrant status to the Associate Commissioner for Examinations in accordance with 8 CFR part 103, which this rule revises accordingly.

The Service's implementation of this rule as an interim rule, with a provision for a thirty-day period to receive public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (d)(3) and (b)(B). The reasons and the necessity for immediate implementation of this interim rule are as follows: The "Armed Forces Immigration Adjustment Act of 1991", Public Law 102–110, created a new special immigrant classification for aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years. The effect of this rule is to extend special immigrant status to a number of aliens who served honorably (or are enlisted to serve) on active duty with the United States Armed Forces. It does not restrict or remove any existing benefits. It is necessary to proceed with interim regulations, rather than proposed regulations, in order to allow the intended beneficiaries to apply for lawful permanent residence as soon as possible. Public Law 102–110 was enacted October 1, 1991 and became effective 60 days from enactment.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the

Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Employment, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. In § 103.1, paragraph (f)(2)(xxxv) is amended by removing the word "and" immediately after the ";".

3. In § 103.1, paragraph (f)(2)(xxxvi) is amended by removing the "." at the end of the sentence and adding in its place "; and".

4. In § 103.1, a new paragraph (f)(2)(xxxvii) is added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxvii) Petition for Armed Forces Special Immigrant under § 204.9 of this chapter.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

5. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

6. A new § 204.9 is added to read as follows:

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) *Petition for Armed Forces special immigrant.* An alien may not be classified as an Armed Forces special immigrant unless the alien is the beneficiary of an approved petition to classify such an alien as a special immigrant under section 101(a)(27)(K) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow or Special Immigrant.

(1) *Who may file.* An alien Armed Forces enlistee or veteran may file the petition for Armed Forces special immigrant status in his or her own behalf. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed with the Service office having jurisdiction over the place of the alien's current or intended place of residence in the United States, or with the overseas Service office having jurisdiction over the alien's residence abroad.

(b) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(K) of the Act if:

(1) The alien has served honorably on active duty in the Armed Forces of the United States after October 15, 1978;

(2) The alien's original lawful enlistment was outside the United States (under a treaty or agreement in effect October 1, 1991) for a period or periods aggregating—

(i) Twelve years, and who, if separated from such service, was never separated except under honorable conditions; or

(ii) Six years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this rule and who has reenlisted to incur a total active duty service obligation of at least 12 years;

(3) The alien is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and

(4) The executive department under which the alien has served or is serving has recommended the granting of special immigrant status to the immigrant.

(c) *Derivative beneficiaries.* A spouse or child accompanying or following to join a principal immigrant who has requested benefits under this section may be accorded the same special immigrant classification as the principal alien. This may occur whether or not the spouse or child is named in the petition and without the approval of a separate petition, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the principal immigrant.

(1) The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's special immigrant application under section 101(a)(27)(K) of the Act was approved. The spouse or child of an immigrant classified as a section 103(a)(27)(K) special immigrant is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(2) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is in the United States but was not included in the principal alien's application, the spouse or child shall file Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over his or her place of residence, regardless of the status of that spouse or child in the United States. The application must be supported by evidence that the principal alien has been granted special immigrant status under section 101(a)(27)(K) of the Act.

(3) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I–824, Application for Action on an Approved Application or Petition, with the office which approved the original petition.

(4) *Revocation of derivative status.* The termination of special immigrant status for a person who was the principal applicant shall result in termination of the special immigrant status of a spouse or child whose status was based on the special immigrant application of the principal.

(d) *Documents which must be submitted in support of the petition.*

(1) A petition to classify an immigrant as a special immigrant under section 101(a)(27)(K) of the Act must be accompanied by the following:

(i) Certified proof of reenlistment (after 6 years of active duty service), or certification of past active duty status of 12 years, issued by the authorizing official of the executive department in which the applicant serves or has served, which certifies that the applicant has the required honorable active duty

service and commitment. The authorizing official need not be at a level above the "local command". The certification must be submitted with Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; and

(ii) Birth certificate of the applicant establishing that the applicant is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year.

(2) Any documents submitted in support of the petition must meet the evidentiary requirements as set forth in 8 CFR part 103.

(3) Submission of an original Form DD–214, Certificate of Release or Discharge from Active Duty; Form G–325b, Biographic Information; and Form N–426, Request for Certification of Military or Naval Service, is not required for approval of a petition for special immigrant status.

(e) *Decision.* The petitioner will be notified of the director's decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner for Examinations in accordance with 8 CFR part 103.

(f) *Revocation under section 205 of the Act.* An alien who has been granted special immigrant classification under section 101(a)(27)(K) of the Act must meet the qualifications set forth in the Act at the time he or she is admitted to the United States for lawful permanent residence. If an Armed Forces special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge prior to entering the United States with an immigrant visa or approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence, the petition designating his or her classification as a special immigrant is revoked automatically under the general provisions of section 205 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility for the classification under section 101(a)(27)(K) of the Act.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

8. A new § 245.8 is added to read as follows:

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

(a) *Application.* Each person applying for adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act must file a Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over the applicant's place of residence. Benefits under this section are limited to aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years, and their spouses and children. For purposes of this section, special immigrants described in section 101(a)(27)(K) of the Act and his or her spouse and children shall be deemed to have been paroled into the United States pursuant to section 245(g) of the Act. Each applicant must file a separate application with the appropriate fee.

(b) *Eligibility.* The benefits of this section shall apply only to an alien described in section 101(a)(27)(K) of the Act who applies for such adjustment. The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 102–110 may also apply for adjustment of status. The provisions of section 245(c) of the Act do not apply to the principal Armed Forces special immigrant or to his or her spouse or child.

(c) *Interview of the applicant.* Upon completion of the adjustment of status interview for special immigrants under section 101(a)(27)(K) of the Act, the director shall make every effort to determine *prima facie* eligibility for naturalization benefits, if the applicant is to be granted status as an alien lawfully admitted for permanent residence. If the director determines that the applicant is immediately eligible for naturalization under section 328 or 329 of the Act, the director shall advise the applicant that he or she is eligible to apply for naturalization on Form N–400, Application to File Petition for Naturalization. If the applicant wishes to apply for naturalization, the director shall instruct the applicant concerning the requirements for naturalization and provide him or her with the necessary forms.

(d) *Deportation provisions of section 241.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 241 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

(e) *Rescission proceedings under section 246 of the Act.* If the Service determines that a military special immigrant under section 101(a)(27)(K) of the Act was not in fact eligible for adjustment of status, the Service may pursue rescission proceedings under section 246 of the Act.

Dated: June 17, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–18080 Filed 7–30–92; 8:45 am]

BILLING CODE 4410–10–M

---

8 CFR Part 270

[INS No. 1408–92]

RIN 1115–AC36

Penalties for Document Fraud

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes within title 8 of the Code of Federal Regulations a new part 270, penalties for civil document fraud. Section 544 of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (November 29, 1990), provides for civil penalties for certain specified acts involving document fraud. This regulation establishes the procedures to be followed in the investigation of civil document fraud violations which will enable the Immigration and Naturalization Service to impose civil monetary penalties against those persons or entities involved in immigration related document fraud.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jill Arndt, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street, NW., room 7025, Washington, DC 20536, telephone 202–514–3093.

SUPPLEMENTARY INFORMATION: This rule amends title 8 of the Code of Federal

Regulations by adding a new part 270 relating to civil document fraud. This new part was necessitated by section 544 of the Immigration Act of 1990 (IMMACT), Public Law 101–649 (November 29, 1990), which amended the Immigration and Nationality Act (the Act) by adding section 274C, civil penalties for document fraud. On May 31, 1991, the Immigration and Naturalization Service (INS or the Service) published at 56 FR 24758 a proposed rule governing these provisions. As a result of the public comments received in response to the proposed rule, several changes have been incorporated into this final rule. What follows is an analysis of those sections of the proposed rule upon which comments were made. With the exception of the minor printing and typographical errors, the remaining sections of the proposed rule have been incorporated into the final regulation.

Section 270.1 defines the term "document." Twelve commenters suggested that the definition was too broad and beyond the scope of the statute. Commenters suggested that the definition of document be restricted to documentation used in satisfying the employment verification requirements of the Act.

Section 274C(a) of the Act provides that it is unlawful for any person or entity knowingly: (1) To forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act; (2) to use, attempt to use, possess, obtain, accept, receive, or provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act; or (3) to use, attempt to use, or to provide, or attempt to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act (emphasis supplied). The term "this Act" is defined in section 1 of IMMACT. Generally, when a provision of IMMACT is incorporated into the Immigration and Nationality Act of 1952, as amended, "this Act" refers to the Immigration and Nationality Act (title 8, United States Code) in its entirety. The preamble provides:

> Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

This language makes it clear that new provisions such as section 274C should be construed, in the absence of explicit evidence to the contrary, as operating upon the material provisions of the entire Act. Thus section 274C is applicable not only to document fraud in the employment verification system, such as fraudulent entries on Forms I–9 (Employment Eligibility Verification), but also to such document fraud as may be material to any other provision of the Act. Moreover, section 274C(a) (4) makes it unlawful "to accept, receive, or to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b)" (emphasis supplied). This is the only one of the four prohibited activities specified in section 274C which relates exclusively to section 274A. If Congress had intended to penalize only document fraud activities relating solely to the employer sanctions provisions of the Act, all four of the activities enumerated under section 274C would have been specifically directed to section 274A of the Act. Therefore, the Service has retained the definition in the proposed rule.

Section 270.2, paragraph (b) provides, in part, that the Service may initiate an investigation upon receipt of a complaint from a third party. Eleven commenters found this provision to be unclear. Commenters correctly assumed that a "third party" could be the same as "any person or entity having knowledge of a violation or a potential violation," as stated in § 270.2 paragraph (a). The rule has been slightly revised to eliminate any confusion about the relationship between paragraphs (a) and (b).

Many commenters suggested that a Notice of Intent to Fine should not be issued if it is based solely on hearsay in the form of Forms I–213 (Record of Deportable Alien), reports from INS informants, and other INS internal reports. Hearsay is admissible in administrative proceedings, and in appropriate circumstances, may be sufficient to support a finding of a violation. See, *e.g., United States* v. *Mester Mfg. Co.*, 1 OCAHO 18 (6/17/88), *aff'd*, 879 F.2d 561 (9th Cir. 1989). Therefore, the Service maintains the language of the proposed rule.

Section 270.2, paragraph (c) provides that prior to the initiation of proceedings before an administrative law judge, the Service may issue subpoenas. Twelve commenters suggested that the INS does not have statutory authority to issue subpoenas in administrative section 274C investigations. In section 274C(d)(1)(B) of the Act, Congress gave individual subpoena authority to administrative law judges. The commenters claimed that since the Service was not specified under section 274C(d)(l)(B), the INS does not have the authority to issue subpoenas. INS subpoena authority contained in section 235(a) of the Act grants the Attorney General, any immigration officer, or a special inquiry officer the authority to issue subpoenas for the production of books, papers, and documents relating to any matter which is material and relevant to the enforcement of the Act. Ten commenters cited *United States* v. *Ramirez*, 905 F.2d 97 (5th Cir. 1990), and *United States* v. *Minker*, 350 U.S. 179 (1956), as a basis for limiting the INS's subpoena power under section 235(a). In *Minker*, however, the Supreme Court held only that an immigration officer may not subpoena a naturalized citizen to testify in an administrative proceeding if the purpose of such proceeding is to institute denaturalization proceedings (which requires a judicial hearing in a Federal District Court) against the citizen. This decision did not in any way limit the Service's subpoena power as it relates to other sections of the Act. See *Minker*, 350 U.S. at 185. *Ramirez*, does not in any way limit the INS's subpoena power. In fact, the question whether the INS had the authority to issue administrative subpoenas in the first instance was not raised by the parties. The district court *Ramirez* decision was reversed on jurisdictional grounds. The circuit court of appeals decision makes it clear that a respondent who receives an INS-issued administrative subpoena cannot seek judicial review of that subpoena until the Service seeks judicial enforcement.

Although no reported case has directly addressed the Service's authority to issue an administrative subpoena to enforce section 274A of the Act, numerous unpublished decisions from federal courts have uniformly upheld this power. Once a complaint in an employer sanctions case is filed with the Office of the Chief Administrative Hearing Officer, it is the practice of the Service to obtain subpoenas from the presiding administrative law judge. The Service intends to follow the same practice in civil document fraud cases. Therefore, the Service retains the language of the proposed rule.

Section 270.2, paragraph (e) delineates the contents of a Notice of Intent to Fine. Thirteen commenters suggested that the Notice of Intent to Fine does not provide the respondent with an adequate explanation of the basis for the charge. The Notice of Intent to Fine provides the respondent with a detailed list of the factual allegations which serve as the basis for the violations charged by the Service, and with citations to the statutory provision(s)

alleged to have been violated. The Service therefore retains the language of the proposed rule.

Eleven commenters suggested that the language in § 270.2, paragraph (e)(1) referring to "the penalty that will be imposed" should be changed to read "the monetary amount of the penalty the Service intends to impose." Commenters maintained that the phrase "will be imposed" implies that a final decision has been made. The Service agrees with the commenters. Therefore, the language in § 270.2(e)(1) has been modified in accordance with the above-stated suggestion.

Twelve commenters suggested that because of adverse consequences that might result from the issuance of a final order under section 274C, the Notice of Intent to Fine should include a statement advising alien respondents of the consequences of such final order. The Notice of Intent to Fine is designed to initiate both section 274A and section 274C proceedings. A Notice of Intent to Fine containing an advisal to an alien respondent that a final order issued under section 274C will result in exclusion and/or deportation proceedings pursuant to the Act would be confusing to non-alien respondents. Service officers will be required to provide all respondents with Form I–822 (Notice of Rights and Waiver of Right to Contest a Notice of Intent to Fine). This form notifies respondents of their rights and of the consequences of a final order issued under section 274C of the Act. Therefore, the Service retains the language of the proposed rule.

In the proposed rule, § 270.2, paragraph (e) stated that the Notice of Intent to Fine will include an advisal to the respondent that the person or entity has the right to request a hearing before an administrative law judge, and that such a request must be received by the Service within 30 days from the service of the Notice of Intent to Fine. Twelve commenters suggested that this 30-day period be lengthened. These commenters alleged that many respondents may require additional time to obtain legal advice or counsel. Congress felt that 30 days would be a sufficient amount of time in which to request a hearing under ordinary circumstances, and the Service agrees that it should not take a respondent more than 30 days to request a hearing under normal circumstances. However, in order to address the possibility of extraordinary or compelling circumstances, the final rule will extend the 30-day time period to 60 days, and will further provide that a postmark date within the 60-day time period will constitute a timely request for hearing. Section 270.2 has been changed to reflect these changes.

Twelve commenters suggested that the Notice of Intent to Fine should be sent to the respondent by certified mail. The INS agrees with the commenters, and the service of a Notice of Intent to Fine will be accomplished by personal service pursuant to 8 CFR 103.5a(a)(2). This section defines personal service as some form of hand delivery of the document or mailing the document by certified or registered mail, return receipt requested to the person's last known address.

Twelve commenters suggested that § 270.2, paragraph (e)(2)(iii) and § 270.2, paragraph (f) should provide a respondent with an opportunity (based on good cause) to file a request for a hearing after the 30-day time period has otherwise expired. Commenters included postal delays and delays in the respondent's ability to obtain a translation of the document as examples of good cause for a delay. The final rule accommodates these commenters' suggestions by extending the time period in which to request a hearing from 30 days to 60 days. Furthermore, the final rule deems a request for hearing postmarked within the 60 days as timely. Sections 270.2(e)(2)(iii) and § 270.2(f) have been modified to reflect the change.

Twelve commenters suggested that the English version of a Notice of Intent to Fine be accompanied by a translation into the respondent's language to ensure that non-English-speaking respondents are advised of proposed charges and rights. Many of the commenters suggested that a bilingual notice is required pursuant to section 545 of IMMACT. Section 545 of IMMACT (section 242B(a)(3) of the Act) requires that deportation charging documents (Orders to Show Cause) be available in both Spanish and English. The issuance of a Notice of Intent to Fine does not initiate deportation proceedings. Therefore, section 545 is not applicable to this regulation, and the Service maintains the language of the proposed rule.

Eleven commenters suggested that the Notice of Intent to Fine contain a properly addressed form for the respondent to use and return in order to request a hearing. The INS may consider the feasibility of this suggestion in the future. However, time constraints make it necessary for the INS to implement this program with a separate written request for a hearing. On October 3, 1991, an interim rule amending 28 CFR part 68, Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices, was published in the **Federal Register**. This regulation, applicable to both sections 274A and 274C cases, was revised in part to permit a request for hearing to serve as a notice of appearance. The Service, after consultation with the Office of the Chief Administrative Hearing Officer (OCAHO), will consider the commenter's suggestion for future modification of the Notice of Intent to Fine.

Section 270.2, paragraph (f) provides in pertinent part that a respondent may waive the authorized period in which to request a hearing before an administrative law judge and ask that the INS issue a final order. Eleven commenters suggested that this sentence be deleted. Commenters maintained that unrepresented respondents would not be advised properly of the adverse effects a Final Order may have in future immigration proceedings. Comments conveyed concerns that respondents in custody could be misled or coerced into signing a waiver of their right to a hearing. Citing *Orantes-Hernandez* v. *Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988), *aff'd*, 919 F.2d. 549 (9th Cir. 1990) as an example, commenters claimed that the courts take a dim view of waivers of statutory rights. In *Orantes-Hernandez* v. *Meese*, the INS was required to notify detainees of their right to representation by counsel in deportation proceedings and their right to apply for asylum in the United States. The decision did not prohibit the INS from accepting requests for voluntary departure. The Service recognizes that a waiver, in order to be given effect, must be made voluntarily and with full knowledge of the consequences. Accordingly, the INS intends to fully advise respondents (including detainees) of their rights under section 274C prior to the acceptance of a waiver.

Several commenters maintained that unrepresented respondents in custody would unwittingly be misled into signing a waiver of their right to a hearing. Congress did not grant to the INS authority to hold a respondent in custody solely for the purpose of section 274C administrative fine proceedings. The custody status of a detained person is not based on the issuance of a Notice of Intent to Fine in section 274C proceedings. The Service, therefore, maintains the language of the proposed rule.

Two commenters suggested that the waiver provision of section 270 should not be implemented without responsible safeguards. Prior to the execution of a waiver, the respondent will be advised of his or her rights provided under section 274C of the Act. Additionally, if the respondent is not a United States citizen he or she will be advised that a waiver of a section 274C hearing will result in the issuance of a final order for a violation of section 274C and the respondent will be excludable and/or deportable from the United States pursuant to the Act. The regulation has been revised accordingly.

Section 270.2, paragraph (f) provides in part that any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. Eleven commenters suggested that this requirement is an unreasonable burden. Commenters maintained that limited access to a translation service could interfere with the respondent's right to request a hearing. The respondent is responsible for filing a written request for a hearing in a timely manner. This is a jurisdictional prerequisite, *United States* v. *Candelario Martinez, Jr.*, OCAHO Case No. 90100172 (6/6/90), and language that does not reasonably communicate respondent's desire for a hearing is not sufficient to invoke the jurisdiction of the tribunal; *United States* v. *Rosewood Office Products*, 1 OCAHO 193 (7/6/90). The INS must be able to tell, from the face of the document, that the respondent wishes to request a hearing. This can only be accomplished with a translation accompanying a request submitted in a foreign language. Therefore, the Service maintains the language of the proposed rule. This is consistent with translation requirements in other immigration proceedings. See 8 CFR 3.31 (deportation proceedings); 8 CFR 274a.9(d) (employer sanctions cases before the Service); 28 CFR 68.7(e) (administrative law judge proceedings).

Section 270.2, paragraph (g) provides that if a respondent does not file a timely written request for a hearing before an administrative law judge, the INS shall issue a final order from which there is no appeal. Nine commenters suggested that section 274C(d)(2)(B) of the Act empowered the Attorney General, not the INS, with the authority to issue final orders. Section 103(a) of the Act provides, in substance, that the Attorney General shall be charged with the administration and enforcement of the Act, and that he may require or authorize any employee of the Service or the Department of Justice to exercise any of the powers, privileges, or duties conferred or imposed by the Act *or regulations issued thereunder* upon any other employee of the Service (emphasis supplied); 28 CFR 0.105. The Attorney General has delegated this authority to the Commissioner of the INS; 8 CFR §§ 2.1 and 100.2(a). Promulgation of these regulations is undertaken pursuant to that delegation of authority.

One commenter suggested that since a section 274C Notice of Intent to Fine has potential exclusion and deportation consequences, the Service should be required to prove the allegation of fraud before an administrative law judge even if the respondent fails to request a hearing. Citing *Woodby* v. *INS*, 385 U.S. 276 (1966), the commenter maintained that an administrative law judge should be required to make an affirmative finding that there was clear, convincing, and unequivocal evidence that the respondent engaged in document fraud before an order could be used for the purposes of deportation. Section 274C(d)(2)(B) of the Act provides that if no hearing is requested, the order of the Attorney General (through the INS) is final and unappealable. Failure to request a hearing does not trigger the hearing process. Therefore, the Service feels it inappropriate to adopt the suggestion. *Woodby* was a case of statutory interpretation based on other grounds of deportation, namely entry without inspection and engaging in prostitution. The case holds only that in the deportation proceeding itself the grounds must be proved by clear and convincing evidence. It did not purport to limit the power of Congress to prescribe grounds of deportation which might be proved in whole or in part by evidence of the outcome of prior and distinct judicial or administrative proceedings. Nor did the *Woodby* Court purport to dictate the standard of review in such prior and distinct proceedings. For instance, where deportability is based on termination of conditional permanent residence, such termination is effected in a non-judicial context with a requirement of clear and convincing evidence; at the subsequent deportation hearing, the Service must prove the termination of conditional residence—but not the underlying facts—by clear and convincing evidence. See section 241(a)(1)(D) of the Act. Similarly, in the civil document fraud context, *Woodby* stands only for the proposition that the facts giving rise to the ground of deportation—including the existence of a final order—must be proved by clear and convincing evidence. Congress itself has set forth the standard of proof in the proceeding that gives rise to the final order, by providing in section 274C(d)(2)(B) of the Act that such an order can come into existence without an administrative hearing. Moreover, with the passage of the Immigration Act of 1990, Congress specifically provided that an alien who is the subject of a final order for violation of section 274C is deportable. Section 307(h)(8) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law No. 102–232, 105 Stat. 1733 (1991) (to be codified at section 241(a)(3)(C) of the Act). Therefore, *Woodby* is inapposite. The failure to timely request a hearing on the allegations contained in a Notice of Intent to Fine issued pursuant to section 274C of the Act results in a final and unappealable order for document fraud. A subsequent deportation proceeding charging an alien with deportability is a distinct proceeding governed by other provisions of the Act.

Twelve commenters expressed the opinion that the language of section 274C(d)(2)(B) of the Act indicates that a final order entered in the absence of a timely, written request for a hearing is only unappealable administratively. Commenters cited section 274C(d)(5) of the Act to propose that such an order may be subject to judicial review. Arguably, section 274C could be read to permit a respondent to ignore the administrative process and proceed directly to a federal appeals court. However, this cannot be what Congress intended.

The doctrine of failure to exhaust administrative remedies is well settled at law. See, *e.g.*, *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938). The purposes of this doctrine are to discourage frequent and deliberate flouting of agency procedure, to promote judicial economy, and to permit the agency to develop the facts and to apply its expertise. See *Cutler* v. *Hayes*, 818 F.2d 879, 890–91 (D.C. Cir. 1987). There are exceptions to this doctrine, such as when the agency process is no longer available, would not afford appropriate relief, or would necessarily be denied; *Panola Land Buyers Ass'n.* v. *Shuman*, 762 F.2d 1550, 1556 (11th Cir. 1985).

Not only would the commenters' interpretation allow a respondent to flout agency procedure, it would prevent the development of the facts and the creation of an administrative record. These latter effects are especially important in civil document fraud cases, where judicial review is vested directly in an appellate rather than a trial court. Moreover, although the administrative process is no longer available if a person or entity has failed to file a

request for hearing within 60 days, a statutory interpretation permitting a person or entity to ignore the administrative process and proceed directly to federal court would frustrate Congress's intent in creating an administrative proceeding for civil document fraud in the first instance. It is beyond peradventure that Congress did not intend to give greater rights to a litigant who has circumvented the administrative procedures set forth in the statute than to one who has followed these procedures. Therefore, the Service construes this section as requiring exhaustion of administrative remedies.

Section 270.3, paragraph (a) provides that nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code. One commenter suggested that the Service may have unintentionally narrowed the field of relevant criminal fraud provisions located throughout the United States Code. The commenter cited 8 U.S.C. 1306(c), false registration of an alien and 48 U.S.C. 408, fraudulent use of a social security card, as examples of additional criminal provisions not proscribed under title 18, United States Code. The Service recognizes that a variety of criminal provisions exist within the United States Code that relate to document fraud. None of these provisions are affected by the enactment of section 544 of IMMACT. Therefore, the Service deems it inappropriate to deviate from the specific language of the statute.

Eleven commenters suggested that Notices of Intent to Fine should not be issued until administrative law judges are appointed to handle section 274C hearings and the procedures for conducting such hearings are established pursuant to the Administrative Procedures Act. Administrative law judges to decide employer sanctions cases were provided by section 101(a)(1) of the Immigration Reform and Control Act of 1986. On October 3, 1991, the Department of Justice, Executive Office for Immigration Review, published an interim rule with request for comments at 56 FR 50049 which revised 28 CFR 68. This revised regulation makes it clear that 28 CFR 69 is also applicable to proceedings commenced under section 274C of the Act. The same administrative law judges that hear cases under section 274A and 274B of the Act will preside over section 274C cases.

One commenter stated that the 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (Jan. 31, 1967) (the "Protocol"), to which the United States is a party, requires the United States to abide by the substantive provision of the 1951 United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (July 28, 1951) (the "Convention"). Article 31(1) of the Convention provides as follows:

> A Contracting State shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened * * * enter or are present in their territory without authorization provided they present themselves without delay and show good cause for their illegal entry or presence.

The commenter views the issuance of a Notice of Intent to Fine for civil document fraud as a penalty prohibited by the Convention. The commenter's views are well taken. In order to avoid any conflict with the Convention, the Service will construe the document fraud penalties as inapplicable to a case in which the only presentation of the document was pursuant to direct departure from a country in which the alien has a well-founded fear of persecution or from which there is a significant danger that the alien would be returned to a country in which the alien would have a well-founded fear of persecution. The Service will not issue a Notice of Intent to Fine for any such act of document fraud committed by an alien prior to the opportunity to present himself or herself without delay to an INS officer and to show good cause for his or her illegal entry or presence in accordance with Article 31(1) of the Convention. A new paragraph (i) has been added to section 270.2 of the final rule to reflect this change.

In accordance with 5 U.S.C. 605(b), the Commissioner of the INS certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

Although this regulation becomes effective on the date of publication in the **Federal Register**, the statute permitted enforcement of causes of actions for violations of the statute occurring after its enactment on November 29, 1990. The regulation therefore contemplates Notices of Intent to Fine for violations occurring on or after November 29, 1990.

List of Subjects in 8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of title 8 of the Code of Federal Regulations is amended by adding a new part 270 to read as follows:

PART 270—PENALTIES FOR DOCUMENT FRAUD

Sec.
270.1 Definitions.
270.2 Enforcement procedures.
270.3 Penalties.

Authority: 8 U.S.C. 1101, 1103, and 1324c.

§ 270.1 Definitions.

For the purpose of this part—

Document means an instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Act. The term "document" includes, but is not limited to, an application required to be filed under the Act and any other accompanying document or material;

Entity means any legal entity, including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association, including an agent or anyone acting directly or indirectly in the interest thereof.

§ 270.2 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274C of the Act may submit a signed, written complaint to the Service office having jurisdiction over the business or residence of the potential violator or the location where the violation occurred. The signed, written complaint must contain sufficient information to identify both the complainant and the alleged violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* When the Service receives complaints from a third party in accordance with paragraph (a) of this section, it shall investigate only those complaints which, on their face, have a substantial probability of validity. The

Service may also conduct investigations for violations on its own initiative, and without having received a written complaint. If it is determined after investigation that the person or entity has violated section 274C of the Act, the Service may issue and serve upon the alleged violator a Notice of Intent to Fine.

(c) *Issuance of a subpoena.* Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated. The Service may issue subpoenas pursuant to its authority under sections 235(a) and 287 of the Act, in accordance with the procedures set forth in § 287.4 of this chapter.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274C of the Act is commenced when the Service issues a Notice of Intent to Fine. Service of this notice shall be accomplished by personal service pursuant to § 103.5a(a)(2) of this chapter. Service is effective upon receipt, as evidenced by the certificate of service or the certified mail return receipt. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter or by an INS port director designated by his or her district director.

(e) *Contents of the Notice of Intent to Fine.*

(1) The Notice of Intent to Fine shall contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the monetary amount of the penalty the Service intends to impose.

(2) The Notice of Intent to Fine shall provide the following advisals to the respondent:

(i) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the government;

(ii) That any statement given may be used against the person or entity;

(iii) That the person or entity has the right to request a hearing before an administrative law judge pursuant to 5 U.S.C. 554–557, and that such request must be filed with INS within 60 days from the service of the Notice of Intent to Fine; and

(iv) That if a written request for a hearing is not timely filed, the Service will issue a final order from which there is no appeal.

(f) *Request for hearing before an administrative law judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the INS, within 60 days of the Notice of Intent to Fine, a written request for a hearing before an administrative law judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for hearing is deemed filed when it is either received by the Service office designated in the Notice of Intent to Fine, or addressed to such office, stamped with the proper postage, and postmarked within the 60-day period. In computing the 60-day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine. A respondent may waive the 60-day period in which to request a hearing before an administrative law judge and ask that the INS issue a final order from which there is no appeal. Prior to execution of the waiver, a respondent who is not a United States citizen will be advised that a waiver of a section 274C hearing will result in the issuance of a final order and that the respondent will be excludable and/or deportable from the United States pursuant to the Act.

(g) *Failure to file a request for hearing.* If the respondent does not file a written request for a hearing within 60 days of service of the Notice of Intent to Fine, the INS shall issue a final order from which there shall be no appeal.

(h) *Issuance of the final order.* A final order may be issued by an officer defined in § 242.1 of this chapter, by an INS port director designated by his or her district director, or by the Director of the INS National Fines Office.

(i) *Service of the final order.*

(1) *Generally.* Service of the final order shall be accomplished by personal service pursuant to § 103.5a(a)(2) of this chapter. Service is effective upon receipt, as evidenced by the certificate of service or the certified mail return receipt.

(2) *Alternative provisions for service in a foreign country.* When service is to be effected upon a party in a foreign country, it is sufficient if service of the final order is made: (i) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(ii) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or

(iii) when applicable, pursuant to § 103.5a(a)(2) of this chapter.

Service is effective upon receipt of the final order. Proof of service may be made as prescribed by the law of the foreign country, or, when service is pursuant to § 103.5a(a)(2) of this chapter, as evidenced by the certificate of service or the certified mail return receipt.

(j) *Declination to file charges for document fraud committed by refugees at the time of entry.* The Service shall not issue a Notice of Intent to Fine for acts of document fraud committed by an alien pursuant to direct departure from a country in which the alien has a well-founded fear of persecution or from which there is a significant danger that the alien would be returned to a country in which the alien would have a well-founded fear of persecution, provided that the alien has presented himself or herself without delay to an INS officer and shown good cause for his or her illegal entry or presence. Other acts of document fraud committed by such an alien may result in the issuance of a Notice of Intent to Fine and the imposition of civil money penalties.

§ 270.3 Penalties.

(a) *Criminal penalties.* Nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274C of the Act. Civil penalties may be imposed by the Service or by an administrative law judge for violations under section 274C of the Act. The Service may charge multiple violations of section 274C of the Act in a single Notice of Intent to Fine, and may impose separate penalties for each such unlawful act in a single proceeding or determination. However, in determining whether an offense is a first offense or a subsequent offense, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense.

(1) A respondent found by the Service or an administrative law judge to have violated section 274C of the Act shall be subject to an order:

(i) To cease and desist from such behavior; and

(ii) To pay a civil penalty according to the following schedule:

(A) *First offense.* Not less than $250 and not more than $2,000 for each fraudulent document or each proscribed activity described in section 274C (a)(1)–(a)(4) of the Act, or

(B) *Subsequent offenses.* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed

activity described in section 274C (a)(1)–(a)(4) of the Act.

(2) Where an order is issued to a respondent composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for a fee for employment (without reference to the practices of, and not under the common control of or common control with, another subdivision), each subdivision shall be considered a separate person or entity.

Dated: July 23, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–17850 Filed 7–30–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–71; Special Conditions No. 25–ANM–59]

Special Conditions: British Aerospace BAe 125–800A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for certain British Aerospace BAe 125–800A airplanes modified by K–C Aviation, Inc. These airplanes are equipped with high-technology digital avionics systems that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 21, 1992. Comments must be received on or before September 14, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–71, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM–71. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–71." The postcard will be date stamped, and returned to the commenter.

Background

On April 6, 1992, K–C Aviation, Inc. applied to the FAA Chicago Aircraft Certification Office for a supplemental type certificate (STC) to modify certain BAe 125–800A airplanes. The BAe 125–800A are two flightcrew, two-engine airplanes, each with a maximum takeoff weight of up to 27,400 lbs. The proposed modification incorporates the installation of an Electronic Flight Instrument System (EFIS) and additional navigation and avionic systems. The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information presented is flight critical. The EFIS as a digital system is vulnerable to high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), K–C Aviation, Inc. must show that the modified BAe 125–800A airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A3EU are as follows: Part 10 of the Civil Air Regulations (CAR), as amended November 1, 1963; part 36 of the FAR, as amended by Amendments 36–1 through 36–12; and Special Federal Aviation Regulation (SFAR) 27, as amended by Amendments 27–1 through 27–4. In addition, compliance has been established with the optional requirements of § 25.1419 (Ice Protection). This certification is equivalent to part 4b of the CAR, dated December 1953, as amended by Amendment 4b–1 through 4b–11, exclusive of § 4b.350(e), and includes Special Civil Air Regulation SR–422B.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 4b as amended) do not contain adequate or appropriate safety standards for the modified BAe 125–800A airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state of the art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it

necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that new technology electrical and electronic systems, such as the EFIS, be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10–500 KHz	60	60
500–2000 KHz	80	80
2–30 MHz	200	200
30–100 MHz	33	33
100–200 MHz	150	33
200–400 MHz	56	33
400–1000 MHz	4,020	935
1–2 GHz	7,850	1,750
2–4 GHz	6,000	1,150
4–6 GHz	6,800	310
6–8 GHz	3,600	668
8–12 GHz	5,100	1,270
12–18 GHz	3,500	551
18–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified British Aerospace BAe 125–800A airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Function whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–18069 Filed 7–30–92; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Parts 21 and 25

[Docket No. NM–66; Special Conditions No. 25–ANM–57]

Special Conditions: Convair 340 or 440 Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for certain Convair Model 340 or 440 airplanes, modified by the Allison Gas Turbine Division of General Motors Corporation. These airplanes, which have been modified previously to incorporate Allison 501 series turbopropeller engines, are equipped with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplanes are exposed to lightning and HIRF.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2135.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1984, the Allison Gas Turbine Division of General Motors Corporation applied for a supplemental type certificate to increase the fuselage length and maximum takeoff weight of

Convair Model 340 or 440 airplanes that have previously been modified to incorporate Allison 501–D22G engines in accordance with Supplemental Type Certificate (STC) No. SA4–1100. These are twin-engine, transport category airplanes with a maximum takeoff weight of 56,156 lbs. (Airplanes modified in accordance with STC No. SA4–1100 are sometimes unofficially referred to as 580's.) The present modification consists of:

1. An increase in the maximum takeoff weight from 58,156 lbs. to 63,000 lbs., an increase in the maximum landing weight from 53,000 lbs. to 58,000 lbs., and an increase in zero fuel weight from 50,000 lbs. to 55,000 lbs.

2. An increase in the fuselage length of 14 ft. 3 in.

3. An increase in the takeoff torque limit so that takeoff power is increased from 4,000 to 4,300 shp. Maximum continuous limits remain unchanged.

4. Installation of Electronic Flight Instrument Systems (EFIS) and related avionics systems. The equipment originally installed in these airplanes presented the required flight information in the form of electro-mechanical analog displays. The information presented is both flight critical and essential. The EFIS as a digital system is vulnerable to lightning and high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101, Allison Gas Turbine Division must show that the Convair 340 or 440, as modified by STC No. SA4–1100, and as further modified, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 6A6 and STC No. SA4–1100, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. 6A6 and STC No. SA4–1100 are as follows: Part 4b of the Civil Air Regulations, effective July 20, 1950, including Amendments 4b-1, 4b-3, and 4b-5; Special Civil Air Regulations No. SR–422B and SR–423; and Special Federal Aviation Regulation No. 27.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Convair 340 or 440 must also be shown to comply with the following sections of part 25, as amended by Amendments 25–1 through 25–72: § 25.869(a); § 25.1303 (a), (b), and (c); § 25.1309 (a) through (g); § 25.1321(e); § 25.1322 (a) through (d); § 25.1331 (a) and (b); § 25.1333 (a), (b), and (c); § 25.1335; § 25.1355 (a) and (c); § 25.1359 (a) through (d); § 25.1431 (a), (b), and (c); § 25.1525; § 25.1529; and § 25.1541(a).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Convair 340 or 440 airplanes, special conditions are prescribed under the provisions of § 21.101 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Convair 340 or 440 must comply with the noise certification requirements of part 36.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Convair 340 or 440 airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronics systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems

under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A) "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where: I24t = time in seconds,
i = current in amperes, and

	Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple burst (Component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak} =	200 KA	100 KA	50 KA	10KA
and,				
$(di/dt)_{max}$ (amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz–1 GHz	4,020	935
1 GHz–2 GHz	7,850	1,750
2 GHz–4 GHz	6,000	1,150
4 GHz–6 GHz	6,800	310
6 GHz–8 GHz	3,600	666
8 GHz–12 GHz	5,100	1,270
12 GHz–18 GHz	3,500	551
18 GHz–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States.

Notice of Proposed Special Conditions No. SC-92-1-NM was published in the **Federal Register** on April 7, 1992 (57 FR 11693). No comments were received.

Conclusion

This action affects only the modified Convair 340 or 440 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the modified Convair 340 or 440 airplanes:

1. *Lightning Protection:* a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronics systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF):* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18070 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 92-AGL-3]

Revocation of Transition Area; Anoka, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action revokes the 700 foot transition area established at Anoka, MN. This action is due to the deactivation of Gateway North Industrial Airport, Ramsey, MN.

DATES: Effective Date: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 12, 1992, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot transition area established at Anoka, MN (57 FR 20215).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. The airspace designation for the transition area listed in this document will be removed from § 71.181 of Handbook 7400.7, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot transition area established at Anoka, MN. This action is due to the deactivation of Gateway North Industrial Airport, Ramsey, MN.

Aeronautical maps and charts will reflect the area returned to a noncontrolled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348 (a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

Anoka, MN [Removed]

* * * * *

Issued in Des Plaines, Illinois on July 21, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-18067 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 91-ANM-8]

Amended Transition Area; Albany, OR; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the

Albany, Oregon, transition area published in a final rule on June 9, 1992 (57 FR 24357), Airspace Docket Number 91-ANM-8.

EFFECTIVE DATE: 0901 u.t.c. July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 91-ANM-8, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92-13507, Airspace Docket 91-ANM-8, published on June 9, 1992, (57 FR 24357), revised the description of the Albany, Oregon, transition area. An error was discovered in the mileage used to describe the transition area and extension. This action corrects that error by clarifying that the distances are specified in nautical miles. This change does not effect the size of the transition area or extension.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Albany, Oregon, transition area, as published in the Federal Register on June 9, 1992 [57 FR 24357), [Federal Register Document 92-13507; page 24358, column 1), is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

Section 71.181 Designation [Corrected]

* * * * *

ANM OR TA Albany, Oregon [Corrected]

1. By removing "within a 6.1 mile radius of the Albany, Oregon Airport and within 1.7 miles either side of the Corvallis" and adding "within a 6.1 nautical mile radius of the Albany, Oregon Airport and within 1.7 nautical miles either side of the Corvallis".

2. By removing "from the 6.1 mile radius" and adding "from the 6.1 nautical mile radius".

* * * * *

Issued in Seattle, Washington, on July 22, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92-18189 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-5]

Alteration of VOR Federal Airway V-524

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description of VOR Federal Airway V-524 between Hayden, CO, and Laramie, WY. This route will provide a more direct route between Hayden and Laramie. This action will improve traffic flow and reduce flying time. This action will also reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION

History

On June 13, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY (56 FR 27217). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received regarding the proposal. The Air Transport Association of America concurred with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY. This route will improve the flow of traffic by providing a direct route between Hayden, CO, and Laramie, WY. The airport is experiencing considerable increases in air traffic especially during ski seasons. As this trend is projected to continue, the demand for adequate navigable airspace mandates this change. This action will improve existing routes within this region and provide additional routes to accommodate increasing air traffic; reduce fuel cost and flying time by providing a more direct route; and also reduce pilot/controller communications.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, as amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-524 [Revised]

From Hayden, CO; Laramie, WY; INT Laramie 069° and Scottsbluff, NE, 254° radials; Scottsbluff; North Platte, NE.

* * * * *

Issued in Washington, DC, on July 24, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-18147 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance With Court Order

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is suspending its regulations at 30 CFR 816.101 which prescribe national time and distance performance standards for the completion of rough backfilling and grading for surface mining operations. This action is being taken as a result of a Joint Stipulation of Dismissal submitted by the National Coal Association, the American Mining Congress, and DOI and entered by the D.C. District Court on April 16, 1992. On that date, the court dismissed without prejudice a complaint filed against DOI regarding these performance standards.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Hunter, Jr., Chief, Research and Technical Standards Branch, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone: (202) 343-1504.

SUPPLEMENTARY INFORMATION:

1. Background and Discussion of Suspended Rule

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth the general requirements governing surface coal mining operations and the surface impacts of underground coal mining operations. OSM has by regulation implemented or clarified many of these requirements and established performance standards to be achieved by various types of mining operations.

In response to U.S. District Court and Court of Appeals decisions (*In re Permanent Surface Mining Regulation Litigation II*, 21 ERC 1724, October 1, 1984, and *National Wildlife Federation* v. *Hodel*, 839 F.2d 694, January 29, 1988), OSM proposed national time and distance performance standards for rough backfilling and grading for surface mining operations. This proposed rule, at 30 CFR 816.101, would have allowed regulatory authorities to submit alternative schedules in lieu of such national standards for area and contour mine operations. (53 FR 43970, October 31, 1988).

On December 17, 1991, OSM promulgated final 30 CFR 816.101. The final rule did not contain the provisions for alternative State-specific schedules which had been included in the proposed rule.

On February 14, 1992, the National Coal Association and the American Mining Congress filed a complaint in the U.S. District Court for the District of Columbia, *National Coal Association and American Mining Congress* v. *U.S. Department of the Interior, et al.*, Civ. No. 92-0408-CRR. The plaintiffs challenged the above regulation's failure to include the proposed alternative schedules. Among other reasons for challenging the rule, the plaintiffs objected to a lack of notice of and opportunity to comment on the agency's failure to adopt the provision which would have allowed alternative State-specific schedules.

On April 16, 1992, the district court entered a Joint Stipulation of Dismissal in the case. The Joint Stipulation, without conceding the merits of any party's claim, provided for dismissal of the action without prejudice, the suspension of the regulation described above, a reconsideration by the Secretary of all issues and the proposal of a new rule, if necessary. The Joint Stipulation also provided that the Secretary would proceed in good faith to consider all comments received on any proposed rule, which will be subject to the usual rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

In compliance with the Joint Stipulation, the regulation at 30 CFR 816.101, promulgated on December 17, 1991, is suspended in its entirety.

2. Procedural Matters

Administrative Procedure Act

Good cause exists under 5 U.S.C. 553(b)(3)(B) to issue this document without advance notice and comment. Publication of the suspension of 30 CFR 816.101 is required to implement the court-approved Joint Stipulation of Dismissal and is a necessary first step in the reconsideration of all issues. Further, suspension of this rule will have immediate impact on mining operations because such operations will continue to be subject to the State-specific contemporaneous reclamation regulations of State and Federal programs which are currently in effect and, prior to the December 17, 1991 rulemaking, were in effect during the preceding seven years when no national OSM rule was in place. A new rulemaking would be subject to the usual APA rulemaking requirements, including the opportunity for notice and public comment.

Executive Order 12291

The DOI has examined this suspension notice according to the criteria of Executive Order 12291 and determined that it is not a major rule and does not require a regulatory impact analysis for the same reasons that promulgation of § 816.101 in 1991 was not a major action and did not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this suspension notice will not have significant economic impact on a substantial number of small entities for the same reasons that promulgation of § 816.101 in 1991 did not have such an impact.

Federal Paperwork Reduction Act

The DOI has determined that this suspension notice does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* for the same reasons the promulgation of § 816.101 in 1991 did not require such approval.

National Environmental Policy Act

The effect of this suspension notice is covered by environmental assessments prepared by the DOI containing a finding that the promulgation of § 816.101 in 1991 would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessments are on file in the OSM Administrative Record, room 5131, 1100 L Street, NW., Washington, DC 20240.

Author

The author of this suspension notice is John T. Smathers, Division of Surface

Mining, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

List of Subjects in 30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface Mining.

Accordingly, 30 CFR Part 816 is amended as set forth below:

Dated: July 24, 1992.

David C. O'Neal,

Assistant Secretary, Land of Minerals Management.

SUBCHAPTER K—PERMANENT PROGRAM PERFORMANCE STANDARDS

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARD—SURFACE MINING ACTIVITIES

1. The authority citation for part 816 continues to read as follows:

Authority: Public Law 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Public Law 98–146, 30 U.S.C. 1257; and Public Law 100–34.

§ 816.101 [Amended]

2. 30 CFR 816.101 is suspended.

[FR Doc. 92–18139 Filed 7–30–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AF64

Regional Office Committees on Waivers and Compromises

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: In order to comply with recent legislative changes, the Department of Veterans Affairs (VA) is amending its regulations by establishing a one-year time limit for application for waiver of collection of a home loan program indebtedness.

EFFECTIVE DATES: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Debt Management Policy Division (047G7), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3405.

SUPPLEMENTARY INFORMATION: On pages 3975 through 3976 of the **Federal Register** of February 3, 1992, VA published a proposed regulation to establish a one-year time limit for application for waiver of collection of a home loan program indebtedness. No comments were received.

Public Law 102–54 (June 13, 1991) revised 38 U.S.C. 5302(b) so that a request for waiver of a debt arising out of 38 U.S.C. chapter 37 must now be made within one year after the date on which the veteran receives notice of the loan program indebtedness. Prior to this legislation, there was no time limit imposed on a request for waiver of a home loan program debt. However, in order for this new one-year time limit to be imposed on a debtor requesting waiver, VA must send such notice by means of certified mail. If VA notifies the debtor of a home loan program debt by means other than certified mail, then there is no time limit imposed on the debtor in which to request waiver. As a result of this legislative change, VA must now amend one of its regulations (38 CFR 1.964) to comply with the new time limit placed on waiver requests of loan program debts.

The Secretary hereby certifies that this final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this final rule primarily affects only individuals indebted to the U.S. Government as a result of participation in programs administered by the Department of Veterans Affairs.

This final rule has also been reviewed under E.O. 12291 and has been determined to be nonmajor because it will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Veterans.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below.

PART 1—GENERAL

1. The authority citation for part 1 is revised to read as follows:

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

2. In § 1.964, paragraph (e) is revised to read as follows:

§ 1.964 Waiver; loan guaranty.

* * * * *

(e) *Application.* A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

* * * * *

Approved: June 26, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92–18106 Filed 7–30–92; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

RIN 2900–AF46

Claims Based on Chronic Effects of Exposure to Mustard Gas

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations to include a regulation to establish service connection for specific disabilities or deaths resulting from the chronic effects of in-service exposure to mustard gas under certain circumstances. This regulation is necessary because VA believes that individuals exposed to mustard gas during secret tests of protective equipment during World War II have been disadvantaged when attempting to establish that their disabilities are service connected. The intended effect of this amendment is to make it easier for those individuals or their survivors to establish entitlement to VA benefits.

EFFECTIVE DATE: This amendment is effective July 31, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add new section 3.316 to 38 CFR in the **Federal Register**

of January 15, 1992 (57 FR 1699–1700). Interested persons were invited to submit written comments, suggestions or objections on or before February 14, 1992. We received three comments, one from a Member of Congress, one from the Veterans of Foreign Wars of the United States and one from a private individual.

One commenter suggested that the rule should require that the listed conditions be manifested within a specified period following exposure to mustard gas, and that the rule as proposed discriminates against World War I veterans who were exposed to mustard gas under combat conditions.

The available English language literature dealing with the effects of exposure to mustard gas includes British and American reports of World War I mustard gas casualities, a 1933 VA study of both living and dead veterans who had been exposed to mustard gas during the war, and a 1960 study of U.S. Army and VA records of 2,718 men who had been hospitalized for mustard gas poisoning in 1918. A review of this literature by Veterans Health Administration (VHA) personnel indicated that for individuals who survive acute poisoning with mustard gas, the chronic, long-term effects (those lasting longer than one year) which have been noted include laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities. That review further indicated that any chronic effects begin shortly after exposure; onset of symptoms is not delayed.

If a World War I veteran files a claim based on residual disability due to mustard gas exposure, service medical records should show evidence of the acute effects of the exposure, and VA develops for evidence establishing that the long-term, chronic effects for which compensation is claimed first appeared shortly after exposure and have existed continually since that time. While it certainly becomes more difficult to establish continuity of a chronic disability with the passage of time, in the case of World War I veterans there was no government-imposed condition which would have discouraged or prevented them from filing claims based on exposure to mustard gas at an earlier date.

Veterans who were exposed to mustard gas during experimental tests of protective clothing and equipment during World War II, however, face a potentially insurmountable disadvantage when attempting to establish entitlement to compensation. Those tests were conducted behind a strictly enforced veil of secrecy, medical records associated with the tests are generally unavailable, and no long-term follow-up examinations were conducted. As a result, service medical records for individuals who participated in those tests may not show evidence of the acute effects of mustard gas exposure. Furthermore, it is likely that participants who developed chronic effects of exposure did not previously file compensation claims with VA solely because they had been instructed not to discuss their involvement in the tests. Physicians who may have treated these veterans for chronic effects more than 40 years ago have almost certainly retired from private practice, making it impossible for a veteran to establish that a chronic form of one of the specified disabilities has existed continually since exposure to mustard gas. For these reasons, VA believes that requiring a chronic form of one of the specified conditions, rather than establishing a manifestation requirement, better serves the purpose of this rulemaking.

Another commenter suggested that rather than naming specific conditions, this regulation should provide service connection for all diseases of the eyes, ears, nose and throat, as well as any damage to the respiratory, cardiovascular, renal and cutaneous systems. The third commenter suggested a specific list of additional conditions for inclusion.

VA does not concur. As discussed above, the proposed rule was based upon a review by VHA personnel of the available English language literature regarding the effects of exposure to mustard gas. That review identified the conditions specified in the regulation as the long-term effects of exposure. The information contained in those studies, however, is not sufficient to expand the list as suggested by either commenter. VA has contracted with the National Academy of Sciences (NAS) to conduct a review of the world medical and scientific literature, including that published in languages other than English, to determine the long-term health effects of exposure to mustard gas. The report is due in December 1992. After reviewing the NAS findings, VA will determine what, if any, change is warranted in our determination regarding the long-term effects of mustard gas exposure, and the regulation will be amended accordingly. In the meantime, we find no good cause to delay payment to those claimants who will be entitled under this rule while we attempt to determine whether the rule should cover a broader range of conditions.

One commenter noted that another agent, Lewisite, was also used during the secret testing of equipment and clothing during World War II, and suggested that the regulation also address the long-term effects of Lewisite exposure.

The literature VA has reviewed does not contain sufficient information regarding Lewisite to warrant a rule on its long-term effects. NAS will address the issue of exposure to other chemical agents, however, and we are deferring a decision as to whether rulemaking is warranted on other agents until more information is available to us.

Another commenter, because he did not find an effective date specified for the proposed rule, assumed that the liberalizing regulation rule found at 38 U.S.C. 5110(g) (formerly 3010(g)) applies.

The preamble to the proposed rule stated that the amendment was proposed to be, and in fact it is, effective the date of publication of the final rule (57 FR 1699). The Secretary finds good cause for doing so since this amendment relieves a restriction and will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102). The commenter is correct in assuming that benefits cannot be payable under this regulation earlier than its effective date.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted without amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or

on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Handicapped, Health care, Pensions, Pesticides and pests, Radioactive materials, Veterans, Vietnam.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. Add a new section to read as follows:

§ 3.316 Claims based on chronic effects of exposure to mustard gas.

Exposure to mustard gas while participating in full-body, field or chamber experiments to test protective clothing or equipment during World War II, together with the development of a chronic form of any of the following conditions manifested subsequent thereto, is sufficient to establish service connection for that condition: Laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities.

Approved June 9, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc 92-18107 Filed 7-30-92; 8:45 am]

BILLING CODE 8320-01-M

---

38 CFR Part 14

RIN 2900-AF50

Recognition of Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a final regulatory amendment regarding recognition of organizations which represent claimants for benefits before VA. This amendment will remove the requirement that a veterans' service organization be chartered by act of Congress in order to be recognized as a "national" organization for purposes of representation of claimants before this Department. The effect of this amendment will be to remove a requirement which the Department no longer considers a reliable indicator of the national scope of an organization.

EFFECTIVE DATE: This rule is effective July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard J. Hipolit, Deputy Assistant General Counsel, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523-3455.

SUPPLEMENTARY INFORMATION: On March 13, 1992, VA published in the **Federal Register** (57 FR 8852) a notice of proposed rulemaking to amend to § 14.628 of title 38, Code of Federal Regulations, to remove the requirement contained in paragraph 14.628(a)(2) that a veterans' service organization be chartered by act of Congress in order to be recognized as a "national" organization for purposes of representation of claimants before VA.

Officials or members of four veterans' service organizations commented on the proposed regulations. The president of one organization voiced support of the proposed amendment. This commenter stated that, so long as organizations recognized as "national" remain truly national in scope and stringent accreditation requirements remain in place to ensure quality assistance to claimants, such action will only benefit veterans and their dependents and survivors in the long run. The commenter expressed the view that the proposed amendment would enhance the quality and diversity of service available to veterans.

One commenter asserted that the proposed amendment would do away with the regulatory process now in place for qualification as a national organization, without proposing new guidelines or regulations to take its place. This commenter expressed concern that, without these guidelines, any organization would be able to claim that it is a national organization and therefore qualified to represent claimants for benefits before VA. This commenter stated that, as a result, the amendment would increase the quantity of claimants' representatives but dilute the quality of representation provided.

This commenter overlooked the fact that VA amended its regulations in 1988 to add specific criteria to § 14.628(a)(2) requiring that, in order to be recognized as a national organization, an organization must establish that its size and the scope of its operations are consistent with national status. These criteria will remain unchanged under the regulation as amended. Further § 14.628(d), which will remain unchanged, requires that organizations applying for recognition as either "national" or "other" organizations meet criteria designed to assure their ability to provide quality representation. We note, additionally, that regulations at § 14.628(e) require the submission of extensive information by organizations applying for VA recognition to assure that the applying organization is capable of meeting the needs of the claimants it will serve. In view of the fact that reliable sources have informed VA that Congress does not have the recourses to investigate or monitor organizations to determine if they are worthy of receipt or retention of a Federal charter, VA believes that the referenced regulations will provide greater assurance than would a chartering requirement that veterans will continue to receive the quality of representation they deserve.

Another commenter stated that if small and poorly organized organizations were allowed to compete with chartered organizations, it would negate the exemplary record of the chartered organizations. This commenter objected to the amendment on the basis that VA would suddenly be confronted with demands for office space from organizations that have little or no record of achievement in handling veterans' service work. This commenter asserted that the proposed amendment might give rise to a demand that the Department expanded its facilities in order to accommodate new organizations, thereby having a severe economic impact on the United States Government and VA.

Our response to these comments is two-fold. First, given the extensive existing requirements for VA recognition in 38 CFR 14.628 (d) and (e), which are applicable to both "national" and "other" organizations, and the remaining criteria in § 14.628(a)(2) concerning the size and scope of operations of organizations recognized as national, it is virtually impossible that a new organization, ill-equipped to serve veterans and their dependents, would be recognized as a national organization by VA under the amended regulations. Second, under 38 CFR 14.637, space in VA facilities is provided for use by national organizations on a discretionary basis subject to availability. VA has no obligation to acquire additional space or otherwise restructure operations in order to accommodate a service organization, even if the organization is recognized as a national organization. The

amendment, thus, would not have any appreciable economic impact on the United States Government or VA.

Officials and members of one organization stated their view that Federal chartering gives recognition to deserving and competent organizations. They expressed concern that the proposed amendment could have unspecified, far-reaching negative implications for veterans' organizations and for veterans. They therefore suggested that the proposed amendment be delayed pending a study of potential detrimental effects.

As noted above, however, because the amendment will not result in recognition as a national organization for any group undeserving of such status, there should be no detrimental effects to VA claimants from the amendment. It is possible that the amendment could result in increased competition among service organizations for available space at VA facilities. However, in light of the remaining criteria for recognition as a national organization, the number of additional groups which could qualify for such space is likely to be limited. Further, while VA in no way intends to denigrate the many accomplishments of chartered organizations, whether Federal chartering is a process which provides deserved recognition to organizations is not determinative for purposes of this rulemaking. The key significance of Federal chartering for purposes of this rulemaking is whether this criterion is helpful in determining whether an organization is a national organization for purposes of § 14.628(a) or whether it must instead seek VA recognition under § 14.628(c). VA believes that the other criteria of § 14.628(a)(2), which, unlike Federal chartering, specifically related to the size and scope of operations of an organization, provide a better test of whether an organization should be considered national.

Va appreciates the comments and suggestions of those concerned individuals and organizations that responded to publication of the proposed amendment. The amendment is adopted as proposed. The final amendment is set forth below.

Since this amendment relieves a restriction which VA believes no longer serves a useful purpose, this amendment is made effective the date of publication of this notice in the **Federal Register.**

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reasons for this certification are that the amendment will affect only a small portion of those organizations or individuals recognized by VA for claim representation purposes, that the organizations affected will be national in scope, and that the economic impact on those organizations will not be significant. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory-flexibility-analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions of government agencies, Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

For the reasons set forth in the preamble, it is proposed that 38 CFR part 14 be amended as set forth below:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 is revised to read as follows:

Authority: 38 U.S.C. 501(a), 5502, 5902–5905, unless otherwise noted.

2. In § 14.628, the introductory text in paragraph (a)(2) is revised, and the authority citation for § 14.628 is revised to read as follows:

§ 14.628 Recognition of organizations.

* * * * *

(a) *National organization.*

* * * * *

(2) It satisfies the following requirements:

* * * * *

(Authority: 38 U.S.C. 501(a), 5902)

Approved: July 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92–18105 Filed 7–30–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 412, 413, and 482

[BPD–423–F]

RIN 0938–AD25

Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare regulations to allow certified registered nurse anesthetists (CRNAs) to receive Medicare payment for the anesthesia services and related care they furnish. In addition, this final rule sets forth the fee schedules under which payment is made for the services of CRNAs, except for the services of CRNAs in certain rural hospitals who are paid on a reasonable cost basis. This rule, which is effective for services furnished on or after January 1, 1989, implements section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4084 of the Omnibus Budget Reconciliation Act of 1987, section 411(i)(3) of the Medicare Catastrophic Coverage Act of 1988, section 608(c) of the Family Support Act of 1988, and sections 6106, 6107 and 6132 of the Omnibus Budget Reconciliation Act of 1989.

This final rule does not reflect the changes concerning the calculation of payment rates contained in section 1833(1)(4) of the Social Security Act, as enacted by section 4160 of the Omnibus Budget Reconciliation Act of 1990. Those changes apply to services furnished on or after January 1, 1991. Thus, the changes to the payment calculation provisions described and published below are applicable only to services furnished in calendar years 1989 and 1990.

DATES: This final rule is effective August 31, 1992, except for the final 1989 CRNA fee schedule rates, which apply to CRNA services furnished on or after January 1, 1989, and the policy that recognizes only the actual time for

fractional time units, which is effective for CRNA services furnished on or after April 1, 1990.

ADDRESSES: To order copies of the **Federal Register** containing this document, send your request to the Superintendent of Documents, U.S. Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy (in paper or microfiche form) is $1.50. In addition, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.** Ask the order desk operator for the location of the Government Depository Library nearest to you.

FOR FURTHER INFORMATION CONTACT:

George Morey, (410) 966–4653. Definition of CRNA

James Menas, (410) 966–4507. All other issues

SUPPLEMENTARY INFORMATION:

I. Background

Anesthesiology services personally furnished by a physician are paid on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment may also be made on a reasonable charge basis for the personal medical direction that a physician furnishes to certified registered nurse anesthetists (CRNAs).

Anesthesia services furnished prior to January 1, 1989 by CRNAs employed and medically-directed by physicians were paid on a reasonable charge basis. Separate payment was not made for the CRNA service; rather, it was included with the reasonable charge payment for medical direction furnished by the physician. The reasonable charge was determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which was multiplied by the number of allowable units, or the physician's actual charge. The number of allowable units was the sum of the base units assigned to the anesthesia procedure, time units that represent the elapsed time of the anesthesia procedure (limited to no more than one time unit for each 15 minutes or fraction thereof of anesthesia time), and modifier units that took into account special factors such as the age or physical condition of the patient, if the physician billed and the carrier recognized modifier units. (The base units were reduced 10 percent, 25 percent, or 40 percent, respectively, for two, three, or four concurrent procedures.)

If a physician furnished medical direction for anesthesia procedures prior to January 1, 1989 that involved CRNAs who were not employed by the physician, the reasonable charge was also determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which was multiplied by the number of allowable units, or the physician's actual charge. However, in these cases, the number of allowable units was the sum of the base units assigned to the anesthesia procedure, time units, which were limited to no more than one time unit for each 30 minutes or fraction thereof of anesthesia time, and modifier units, if the physician billed and the carrier recognized modifier units. (The base units were reduced 10 percent, 25 percent, or 40 percent, respectively, for two, three, or four concurrent procedures.)

The difference in payment between a medically directed anesthesia procedure involving a CRNA who was the physician's employee and a medically directed anesthesia procedure involving a CRNA who was not the physician's employee was two time units per hour multiplied by the appropriate conversion factor.

Anesthesia services furnished prior to January 1, 1989 by CRNAs employed by hospitals or obtained under arrangements were paid to the hospital on a reasonable cost basis for anesthesia services furnished to hospital inpatients or outpatients. Anesthesia services furnished prior to January 1, 1989 by a CRNA employed by an ambulatory surgical center (ASC) or working as an independent contractor were included as part of the ASC's facility fee.

II. Summary of New Legislation

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. The provisions of section 9320 of Public Law 99–509 made the following changes (which are reflected in sections 1832(a)(2)(B), 1833(a)(1)(E), 1833(a)(1)(H), 1833(1), 1861(b)(4), (s)(11), and (bb), 1862(a)(14), and 1886(a)(4) of the Social Security Act (the Act)) that affect Medicare payment for the services of nurse anesthetists:

- Effective with services furnished on or after January 1, 1989, direct payment is provided for anesthesia services and related care furnished by CRNAs, subject to State licensure requirements and the requirements of the certifying body for nurse anesthetists.
- Medicare pays 80 percent of the lesser of the actual charge or the fee schedule amount for anesthesia services and related care after the Part B deductible has been met. Assignment is mandatory in order for CRNAs to receive payment for these services, and violators are subject to civil monetary penalties.
- The Secretary is directed to establish a fee schedule for CRNA services, using a system of time units, a system of base and time units, or any other appropriate methodology. The initial fee schedule must be based on audited data from cost reporting periods ending in Federal fiscal year (FY) 1985, and the fee schedule must be adjusted annually by the percentage increase in the Medicare economic index (MEI) in order to be effective on January 1st of each year. The fee schedule can be national or adjusted for geographic areas.
- No hospital that presents a claim or request for payment for services of a CRNA may treat any uncollected coinsurance amount imposed with respect to such services as a bad debt of the hospital.
- The reasonable cost pass-through provision ends effective for CRNA services furnished to hospital inpatients after December 31, 1988.
- The initial fee schedule must be set so that total payment for CRNA services, plus the applicable coinsurance in FY 1989, equals estimated total amounts that would have been paid in 1989 if the services were included as inpatient hospital services. The Secretary is also directed to adjust physician charges for medical direction or the fee schedule amounts, or both, to ensure that total payments plus coinsurance for all these services in 1989 and 1990 do not exceed the amounts that would have been paid absent this legislation. If this results in reductions in physician reasonable charges, a nonparticipating physician may not charge more than 125 percent of the reduced prevailing charge plus (in the first year) half the difference between his or her actual charge in the previous year and 125 percent of the reduced prevailing charge. Violators are subject to sanctions.

In addition, section 9320 of Pub. L. 99–509 added a new paragraph (11) to section 1861(s) of the Act to provide

specifically that "services of a certified registered nurse anesthetist (as defined in subsection (bb))" are among the medical and other health services that are covered under Part B of Medicare. Section 1861(bb)(1) of the Act states that "services of a certified registered nurse anesthetist" means anesthesia services and related care, furnished by a CRNA, which the CRNA is authorized to perform by the State in which the services are furnished. Section 1861(bb)(2) of the Act states that the term "CRNA" means a CRNA licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. Section 1861(bb)(2) of the Act further authorizes the Secretary, in prescribing these requirements, to use the same requirements as those established by a national organization for the certification of nurse anesthetists.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. The provisions of section 4084 of Public Law 100–203, which amended sections 1833(l)(2) and (l)(5)(A) of the Act, made the following changes to the CRNA fee schedule legislation established by section 9320 of Public Law 99–509:

- The initial fee schedule could be developed from "other data as the Secretary determines necessary" in addition to using FY 1985 cost report data.
- The CRNA payment based on the fee schedule can be made to an ambulatory surgical center as well as the CRNA, the hospital, the physician, or group practice.

In addition to the changes made by section 4084 of Pub. L. 100–203, section 4048(a) of Public Law 100–203 amended section 1842(b) of the Act to provide that in determining the reasonable charge of a physician for medical direction of two or more CRNAs for anesthesia services furnished on or after April 1, 1988 and before January 1, 1991, the number of base units recognized for each concurrent procedure (other than cataract surgery or an iridectomy) is reduced by—

- Ten percent, in the case of medical direction of two CRNAs concurrently;
- Twenty-five percent, in the case of medical direction of three CRNAs concurrently; and
- Forty percent, in the case of medical direction of four CRNAs concurrently.

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 411(i)(3) of Public Law 100–360 made technical amendments to section 4084 of Public Law 100–203 to provide that—

- The term "CRNA," as prescribed by the Secretary, also includes an anesthesiologist assistant (section 1861(bb)(2) of the Act); and
- With respect to CRNA services, the amounts paid would be 80 percent of the least of the—

—Actual charge;
—Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or
—Fee schedule amount (section 1833(a)(1)(H) of the Act).

Section 411 of Public Law 100–360 was not repealed by the Medicare Catastrophic Coverage Repeal Act of 1989, Public Law 101–234.

On October 13, 1988, the Family Support Act of 1988 (Pub. L. 100–485) was enacted. Section 608(c) of Public Law 100–485 amended section 9320 of Public Law 99–509 to allow certain hospitals that are located in a rural area (as defined for purposes of section 1886(d) of the Act) to continue to be paid on a reasonable cost basis for CRNA services during calendar years 1989, 1990, and 1991.

To qualify in 1989, a rural hospital must establish before April 1, 1989 to the satisfaction of the Secretary that—

- It employed or contracted with not more than one full-time equivalent CRNA as of January 1, 1988;
- It performed 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia in calendar year 1987; and
- Each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the calendar year that, in the prior year, it did not perform more than 250 surgical procedures including inpatient and outpatient procedures requiring anesthesia services.

The provisions added by section 608(c) of Public Law 100–485 are to be implemented so as to maintain budget neutrality consistent with section 1833(l)(3) of the Act.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) was enacted. Section 6132 amended section 608(c) of Public Law 100–485 as follows:

- The limit has been raised from 250 surgical procedures, both inpatient and outpatient, requiring anesthesia services to 500 surgical procedures.
- The expiration provision that allowed certain qualified rural hospitals to continue reasonable cost payments only through calendar year 1991 has been eliminated. Rural hospitals can continue to elect on a calendar year basis reasonable cost payments for CRNA services.
- The budget neutrality provision, which required us to adjust CRNA fee schedule rates to reflect the election of reasonable cost payments, has been eliminated.

Section 6106 of Public Law 101–239 revised the method by which time units are counted for anesthesia services furnished by physicians or CRNAs. For anesthesia services furnished on or after April 1, 1990, time units are counted based on the actual time of the fractional time unit. For anesthesia services furnished prior to April 1, 1990, fractional time units were rounded to a full time unit.

Section 6107(a) of Public Law 101–239 delays the update of the CRNA fee schedule conversion factors for CRNA services furnished on or after January 1, 1990 to April 1, 1990. Section 6107(b) provides that the percentage increase in the MEI used to update CRNA conversion factors applicable to CRNA services furnished on or after April 1, 1990 is zero percent.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) was enacted. Section 4160 of Public Law 101–508 amended section 1833(1)(4) to provide for a system of statutorily established conversion factors for both medically directed and nonmedically directed services furnished by CRNAs beginning in calendar year 1991 and ending for CRNA services furnished after calendar year 1996. The conversion factors are index-adjusted to account for geographical differences. This final regulation does not reflect the provision of this new legislation. Thus, the amendments published below to the regulations concerning the calculation of payments are effective only for services furnished in calendar years 1989 and 1990.

III. Summary of Provisions of the January 26, 1989 Proposed Rule

On January 26, 1989, we published a proposed rule in the **Federal Register** (54 FR 3803) to allow CRNAs to receive Medicare payment for anesthesia services and related care and to set forth the fee schedules that would be used to make payment for these services, except for the services of CRNAs in certain rural hospitals, which would be paid on a reasonable cost basis. In that rule, we proposed to implement the provisions of Public Law 99–509, Public Law 100–203, Public Law 100–360, and Public Law 100–485, and

we requested public comment on these changes.

A. Services of a CRNA or an Anesthesiologist Assistant

We proposed adding "services of a CRNA or an anesthesiologist assistant" to the list of covered medical and other health services in the regulations.

We proposed defining "CRNA" as a registered nurse who is licensed as a professional registered nurse by the State in which he or she practices and meets any other licensure requirements the State imposes with respect to nonphysician anesthetists, and either—

- Is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists; or
- Has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

Further, we proposed defining an "anesthesiologist assistant" as an individual who is permitted by State law to administer anesthesia, has successfully completed a six-year program for anesthesiologist assistants, two years of which consist of specialized academic and clinical training in anesthesia, and who is under the direct supervision of an anesthesiologist who is physically present.

In addition, we proposed defining the term "anesthetist" to include both anesthesiologist assistants and CRNAs. The use of this term represents a clear and convenient means of referring to both types of practitioners.

B. General Method of Payment

We proposed that effective with services furnished on or after January 1, 1989, payment for the services of a CRNA would be made, after the Part B deductible has been met, at 80 percent of the least of the—

- Actual charge;
- Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or
- Fee schedule amount.

C. Time Units

We proposed that services of CRNAs be paid on a basis similar to that used for anesthesiologists, that is, a system based on base and time units. We believe that use of the same type of system for anesthesia services furnished by CRNAs and anesthesiologists would be simpler for carriers to administer. Thus, we proposed that, for purposes of the fee schedule, one time unit would be allowed for each 15 minutes of anesthesia time.

In addition, we described the recommendations made by the Office of Inspector General (OIG) to change the way an anesthesia time unit is computed. The options were presented by OIG in a report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A-07-88-00082 issued on August 9, 1988). (Copies of this report can be obtained by writing to OIG at 330 Independence Ave., SW., Washington, DC 20201.) The options were as follows:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is, 65 minutes would equal four and one-third time units instead of five units.
- Round all fractional units down to the next lower whole unit, that is, disregard all fractional time units. (For example, any amount of time between 61 and 74 minutes would equal four units instead of five units.)
- Pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (7.5 minutes) would be disregarded. (For example, 65 minutes would equal four units, but 68 minutes would equal five units.)

In the preamble to the proposed rule, we also stated our intention to eliminate the separate time unit element of the anesthesia payment system within 2 years of the effective date of this final rule. We indicated that the elimination of time units would be the subject of a separate notice of proposed rulemaking and that comments submitted in response to that proposed rule would be carefully considered before implementation of a revised time unit policy.

D. Development of a Fee Schedule

Physician anesthesia services furnished on or after January 1, 1989, but prior to March 1, 1989, the date the uniform relative value guide for physician anesthesia services was implemented, were paid on the basis of the carrier's specific relative value system. (The uniform relative value guide was implemented by Transmittal No. 1287 to the Medicare Carriers Manual (HCFA-Pub. 14), issued in February 1989.) The uniform relative value was implemented for anesthesia services furnished on or after March 1, 1989. Under the uniform relative value guide, modifier units were eliminated. Final regulations to implement the uniform relative value guide were published on August 7, 1990 (55 FR 15150). In sections 5261 and 8312 of the Medicare Carriers Manual, we also provided for CRNA services furnished on or after January 1, 1989, but prior to March 1, 1989, to be paid under the carrier specific relative value system. We provided for CRNA services furnished on or after March 1, 1989, to be paid under the uniform relative value guide. Modifier units were not recognized for CRNA services under either the carrier specific system or the uniform relative value guide.

The CRNA fee schedule payment would be determined by multiplying an appropriate conversion factor by the sum of the base units for the anesthesia procedure and the time units. For CRNA services, one time unit would be allowable for each 15 minutes or fraction thereof of anesthesia time.

We proposed establishing the CRNA fee schedule based on the 1986 American Association of Nurse Anesthetists (AANA) calendar year survey (with certain adjustments), and structuring it on an individual State-level basis. Within each State, we established two separate fee schedules; one for CRNAs working under the medical direction of an anesthesiologist and one for CRNAs working only under the general supervision of the surgeon.

In using the AANA salary survey to develop the State level fee rate or conversion factor for medically directed hospital-employed CRNAs, the following adjustments, explained in detail in the notice of proposed rulemaking, were made:

Step 1. Updating the 1986 earnings to the 1989 level—We proposed a six percent rate of increase annually through 1989 (projecting this rate of change through 1989 would require an increase of 19 percent (that is, $1.06 \times 1.06 \times 1.06$] over 1986 average earnings.)

Step 2. Fringe Benefit Adjustments—Because the value of fringe benefits was not reported on the AANA survey, we proposed using 20 percent of the 1986 national average salary or income of CRNAs as a reasonable approximation of the costs of fringe benefits incurred by hospitals for their CRNA employees.

Step 3. Billing Costs—We proposed increasing salaries and fringe benefits by seven percent to account for billing costs.

Step 4. Constructing a Conversion Factor—The annual earnings figures resulting from the adjustment in steps 1 through 3 above were translated into a conversion factor by—

- Dividing the adjusted average annual CRNA compensation by the average annual anesthesia caseload performed by a full-time medically

directed CRNA (649 cases) to derive average per case earnings; and

• Dividing this figure by the average of 11.6 units per case (the total of average time and base units per case) to compute a conversion factor.

Step 5. Malpractice Adjustment—The fee schedule conversion factor computed in step 4 was further adjusted to reflect the cost of malpractice insurance incurred by hospitals for their CRNA employees.

We also calculated a separate State specific rate for physician-employed medically-directed CRNAs. This rate was calculated by multiplying the 1989 participating physician prevailing charge conversion factor by a factor of 101/30 and dividing this amount by 12.1 units.

Finally, we proposed establishing a single blended rate that weighs medically-directed hospital-employed CRNA data at 58 percent and medically-directed physician-employed CRNA data at 42 percent. (Excluding CRNAs who are not medically-directed, nationally approximately 58 percent of medically-directed CRNAs are employed by hospitals and 42 percent are employed by physicians. These weights are based on data in the 1986 AANA's Annual Salary Survey.)

We proposed to establish the State-level rate for CRNAs who are not medically-directed by comparing the relationship between the national cost per case of full-time CRNAs who are not medically-directed and full-time hospital-employed CRNAs who are medically-directed and applying this ratio to the State-level rates for medically-directed CRNAs.

Section 608(c) of the Family Support Act required that we maintain budget neutrality in implementing the rural hospital cost election. The rural hospitals electing cost reimbursement would receive greater reimbursement under the cost election than under the fee schedule. As a result, we had to make an adjustment to the nonmedically-directed rate.

E. Continuation of Reasonable Cost Payments for Rural Hospitals

As required by section 9320 of Public Law 99–509 (as amended by section 608(c) of Pub. L. 100–485), we proposed to allow certain hospitals located in rural areas to continue to be paid on a reasonable cost basis for CRNA services furnished during calendar years 1989, 1990 and 1991. To qualify in 1989, a rural hospital must have established before April 1, 1989, to the satisfaction of the Secretary, that—

• As of January 1, 1988, it employed or contracted with a CRNA but not more than one full-time equivalent CRNA:

• In 1987, it had a volume of 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services; and

• Each CRNA employed by or under contract with the hospital must have agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the respective calendar year that in the prior year it did not furnish more than 250 surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services.

We proposed defining a full-time equivalent anesthetist as one or more anesthetists who, in total, work no more than 2,080 hours per year. These hours represent total hours at the hospital and include time spent in furnishing anesthesia services to patients and general services to the hospital. We also proposed defining surgical procedures requiring anesthesia services as those procedures in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

As required by section 9320(k) of Public Law 99–509 (as amended by section 608(c) of Public Law 100–485), a rural area would be defined in the same way it is defined for purposes of the inpatient hospital prospective payment system (in accordance with section 1886(d) of the Act). The definition is set forth at § 412.62(f) and provides that a rural area is any area outside of a Metropolitan Statistical Area (MSA), a New England County Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget, or the New England counties deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. (These requirements are explained in greater detail in the September 30, 1983 final rule on the inpatient hospital prospective payment system (53 FR 38499).) Since for purposes of payment under section 1886(d) of the Act, these hospitals are no longer classified as rural, we proposed that these hospitals also would not qualify as rural hospitals under section 9320(k) of Public Law 99–509 and would not be eligible to continue to receive payment on a reasonable cost basis for CRNA services during 1989, 1990, and 1991.

The legislation also requires that this provision be implemented so as to maintain budget neutrality consistent with section 1833(1)(3) of the Act. As indicated in the preamble to the proposed regulation, we assumed that the budget neutrality adjustment would affect only the nonmedically-directed rate and not the medically-directed rate. The rural hospitals that would qualify for reasonable cost payments would likely be those hospitals with nonmedically-directed CRNAs. As a result, in the proposed regulations, we reduced the nonmedically-directed CRNA conversion factor by 5.7 percent to account for the continuation of reasonable cost payments to rural hospitals furnishing fewer than 250 surgical procedures requiring anesthesia. This adjustment was necessary because the AANA data did not specifically exclude those rural hospitals that would qualify for reasonable cost payments. Data from these rural hospitals would produce conversion factors for CRNA services that are higher than the conversion factors for CRNA services for other rural hospitals with higher anesthesia caseloads.

F. Updating the Fee Schedule for 1989 and 1990

We proposed that for calendar years 1989 and 1990 we would update the CRNA fee schedule by the percentage increase in the MEI, as required by section 1833(1)(2) of the Act.

G. Relationship of Payment Under the Fee Schedule to Payment to Physicians for the Medical Direction of CRNAs

We proposed to revise the method of payment to physicians who medically-direct anesthesia procedures involving CRNAs, on or after January 1, 1989, to allow no more than one time unit for each 30 minutes of anesthesia time. One time unit for each 15 minutes would be allowed only if the physician personally performs the anesthesia procedure.

H. Supervision of CRNAs by Physicians Other Than Anesthesiologists

We proposed that, effective January 1, 1989, medical direction payments could not be made to a surgeon who concurrently supervises CRNAs and performs surgery.

We proposed that medical direction payments not be made to a radiologist or psychiatrist who furnishes nominal supervision of the anesthesia services since we do not believe these services meet the medical direction requirements under § 405.552.

I. Bad Debts Associated With CRNA Services

We proposed revising § 413.80 to implement section 1833(1)(5)(C) of the Act, which requires that a hospital that files a claim or a request for payment for the services of a CRNA may not use any uncollected coinsurance amount for a CRNA service as a bad debt.

J. Related Care Furnished by CRNAs

Section 1861(bb)(1) of the Act defines services of a CRNA as "anesthesia services and related care furnished" by a CRNA. We proposed not recognizing additional payments for related care services, such as pain management services, specialized monitoring activities, and other services not directly connected to the anesthesia service associated with the surgical service because payment for these services has been reflected in the CRNA conversion factor rates.

IV. Discussion of Public Comments

We received approximately 4,500 comments on the proposed regulations to implement a CRNA fee schedule payment system. The bulk of these comments were from individual CRNAs, CRNA groups, individual anesthesiologists, and anesthesiology groups. We received comments from nursing associations, the American Hospital Association (AHA), regional and State hospital associations, the AANA and State associations of nurse anesthetists, the American Society of Anesthesiologists, and the Anesthesia Care Team Society. We also received comments from such groups as the National Rural Health Association and the Blue Cross/Blue Shield Association.

The majority of anesthesiologists and anesthesiologist groups reacted positively to the proposed regulations. They expressed the view that the rates were fair, reasonable, and not disruptive to "anesthesia care" team practice arrangements. The majority of anesthesiologists commented favorably on the way the rates were blended so as to avoid further reductions in medical direction allowances.

The majority of commenters, who were CRNAs, viewed the proposal unfavorably, alleging that the proposed rates were too low, the proposed methodology was flawed, and payment was not separately recognized for related care services furnished by CRNAs.

A. Structure and Geographic Basis for the Fee Schedule

Comment: Instead of a State-level payment system, the AANA and other commenters proposed a national CRNA fee schedule that would include a national medically-directed CRNA rate (that is, $14) and a national nonmedically-directed CRNA rate (that is, $21). The proposal of national rates is predicated on the basis that there is more variation in CRNA salary/incomes within a State than there is in CRNA salary/incomes across State lines.

Response: Additional discussions with the AANA indicated that some of the impetus for national rates was due to the extreme variation in the proposed CRNA rates between contiguous States. This was highlighted by Idaho, which had the lowest proposed rate, and Wyoming, which had the third highest proposed rate. We believe, however, that data problems resulted in Idaho's having had the lowest rate. These data problems have been overcome through the use of better data and a change in the method used to develop nonmedically-directed rates in this final rule. Whereas the proposed methodology produced State-specific nonmedically directed rates by multiplying the State-specific medically-directed rate by a uniform national statistic, the final nonmedically-directed rates are generally based on State-specific data. The final regulations recognize the State as the geographic area for construction of the CRNA fee schedule.

Comment: The AHA and other commenters recommend a CRNA payment system that uses a geographic area smaller than the State as a unit for payment purposes. These commenters indicate that the State-specific CRNA conversion factor rates do not reflect differences in the costs of CRNA services, given variations in cost of living and wage rates within States.

Response: In the proposed regulations, we clearly pointed out that we do not have data available on CRNA payment rates on a county-wide basis that would allow construction of payment rates by locality. (Most localities are made up of a single State, a county, or a group of counties). In addition, we were concerned that establishing CRNA rates by locality or county or some other smaller division of the State might introduce artificial incentives for CRNAs to cross county or divisional levels to maximize payments.

The commenters are essentially suggesting that we use an index such as the hospital wage index to establish CRNA rates. Use of an index such as this is not appropriate in establishing CRNA rates because CRNA wages are not necessarily correlated with hospital wages. The salaries of CRNAs are often higher in rural areas than urban areas. We believe, and the AANA concurs, that whether or not an anesthesiologist directs the service is the relevant factor in explaining variations in CRNA salaries/income within a State.

Comment: Under the proposed rule, the CRNA rates were calculated using national anesthesia caseload averages and State-specific salary data. Several commenters indicated that combining national anesthesia caseload averages with area-specific salary data would likely distort the area-specific rates. These commenters recommended that State (or geographic) payment rates should consistently use data specific to the selected geographic areas so that accurate area-specific rates could be calculated.

Response: We are adopting this recommendation. Except as noted, we are computing State-specific rates using reported State-specific anesthesia caseloads. However, we have made adjustments where the State-specific anesthesia caseloads reported on the AANA's survey seemed overstated. The use of the overstated caseload resulted in an artificially low conversion factor for that State. We attempted to overcome this data problem by substituting a national average caseload for the State-specific caseload. Specifically, if the State average caseload was at least twenty-five percent greater than the national average caseload, we have substituted the national average caseload for the reported State-specific caseload. There are four States in which this occurred: Delaware, Georgia, and Rhode Island for the medically-directed rate, and Oklahoma for the nonmedically-directed rate. The reported State-specific average caseload produced a conversion factor that was unusually low. The substitution of a national average caseload for the State-specific average caseload produced a higher rate than the rate calculated from State-specific data for the four States mentioned above.

Comment: A number of commenters contended that the CRNA fee schedule payment rates are too low and do not adequately incorporate the cost of fringe benefits or overhead costs. The AANA specifically provided various data to support as much as a 26 percent adjustment for overhead. They also provided data sources supporting a fringe benefit factor greater than 20 percent. Overall, the AANA proposed a 20 percent salary adjustment for fringe benefits, a 20 percent salary adjustment for general overhead and billing costs, and a 10 percent salary adjustment for malpractice costs.

Response: We reviewed data from hospital cost reports that began on or after October 1, 1984 and ended before October 1, 1985, (that is, the second Prospective Payment System (PPS–2) cost reporting period) as well as cost reports that began on or after October 1, 1985 and ended before October 1, 1986, (that is, the third Prospective Payment System (PPS–3) cost reporting period). For 3,021 PPS–2 cost reports for which CRNA costs were allowed, fringe benefits averaged 13 percent of salary and other allocated overhead averaged 19 percent of salary. For 3,081 PPS–3 cost reports for which CRNA costs were allowed, fringe benefits averaged 12 percent of salary and other allocated overhead averaged 20 percent of salary. Based on these results, we are providing for a 32 percent salary adjustment for fringe benefits and other overhead.

We are also providing an adjustment for malpractice insurance. This adjustment is made on the basis of the most current State-specific rates (that is, 1989 rates) on malpractice premiums for CRNAs. (The source of the malpractice data is the St. Paul Marine and Fire Insurance Company.) The actual adjustment is the State-specific malpractice rate divided by the product to the average State level CRNA caseload and the average number of base and time units per case. There are different State caseloads and average units per case for the two categories of CRNAs. Thus, there are different malpractice add-ons depending on whether the CRNA is or is not medically-directed.

Comment: The AANA, various State hospital associations, and other commenters claimed that the CRNA fee schedule rates do not appropriately reflect increases in CRNA salaries since 1986.

Response: At the time we published the proposed CRNA rates, we did not have salary/income data beyond 1986. Since then, the AANA has supplied us with data on salary/income levels for 1987 and 1988. Although the 1986 survey provided information on full-time medically-directed and nonmedically-directed CRNAs, the data at the State level for nonmedically-directed CRNAs was not sufficient in itself to establish State-specific rates. The 1987 survey has a much better response rate than both the 1986 and the 1988 survey for nonmedically-directed CRNA salaries/incomes. The 1987 survey includes responses from both full-time and part-time CRNAs. Because the 1987 survey overcomes some of the data problems inherent to the 1986 survey and because its results are more current, we have decided to use the 1987 annual survey to compute State-level rates for both medically and nonmedically-directed CRNAs. Therefore, we need to trend the salaries/incomes only for 1988 and 1989. Data from the AANA's 1988 survey indicated a 9.4 percent increase in salary/income, and the AANA predicts a 12.8 percent increase for 1989. The 12.8 percent increase for 1989 is an average of the increase in CRNA salaries/incomes during 1987 and 1988.

We have decided to use the 9.4 percent increase from the AANA's 1988 survey. However we have decided not to use the AANA "predicted rate" of 12.8 percent for 1989 because it is not derived from currently reported CRNA salary levels. Instead, we are using a rate of 8.2 percent for 1989. This rate is the compounded annual rate of increase in CRNA salaries from 1982 through 1988. The combined trend factor for 1988 and 1989 is 1.18 (that is, 1.094×1.082).

Comment: The AANA and other commenters argued that the methodology for the nonmedically-directed CRNA rates understates the nonmedically-directed rates because it does not consider the differences in both the average caseload and the complexity of cases between the medically-directed CRNA and the nonmedically-directed CRNA.

Response: We have reviewed the proposed methodology and find that it adequately reflects differences in average caseload volumes between the two practice arrangements. We do, however, agree that the methodology does not adequately reflect differences in average caseload complexity between the two practice arrangements. The proposed conversion factor for nonmedically-directed services should have been approximately 6.3 percent higher because of the differences in caseload complexity. This is illustrated below. As noted in these comments, the 1987 AANA survey, because of its response rate, allows us to establish State-specific nonmedically-directed rates based on State-specific salary and caseload information rather than based on national statistics. Under the proposed methodology, the nonmedically-directed rate was not based on data reported by nonmedically-directed CRNAs at the State level. Rather, the State-specific nonmedically-directed rate was 137.5 percent of the medically-directed rate. Also, in developing the final nonmedically-directed rates, we used an average base/time unit value (10.9 units) that is specific to nonmedically-directed CRNAs. This value differs from the average base/time unit value (11.6 units) for hospital-employed medically-directed CRNAs.

	Hospital-employed medically-directed 1986 CRNA average salary	Nonmedically-directed 1986 CRNA average salary
Salary	$46,152	$56,805
1986 average cases	641	541
1986 average salary cost per case	$72	$105
Budget neutrality adjusted rate	$72	$99
Fringe benefits	1.20	
Trend factor	1.19	
Billing cost	1.07	
Malpractice (avg)	.10	
Adjustment factors (1.20×1.19×1.07+.10)	1.63	1.63
1989 adjusted salary cost per case ($72×1.63)	$117.36	$161.37
Average units per case	11.6	10.9
Average conversion factor (adjusted salary cost per case divided by average units per case)	10.12	14.80
Actual differential	1.462	
Proposed differential	1.375	

Comment: The AANA and other commenters pointed out that the law provides for "related care" services furnished by CRNAs to be paid under the CRNA fee schedule. They recommended that a separate and identifiable payment system be established for "related care" services. According to the AANA, some CRNAs provide almost only "related care" services and failure to provide separate payment for these services will result in no Medicare payment to these practitioners.

Response: In the proposed rule, we described related care services as insertion of arterial lines, central venous pressure lines, or Swan Ganz catheters, pain management services, and other services not directly connected to the anesthesia service or associated with the surgical service. We did not provide for separate payment for related care services. Rather, we acknowledged that the salary of the CRNA, as reported on the AANA's annual survey, reflected compensation for all activities including related care services. Moreover, we did not have any data that would allow us to determine to what extent the conversion factor should be adjusted to allow separate payment for related care services. As a result, we proposed to pay for related care services indirectly through the establishment of a conversion factor that would be higher than it would have been if related care services were paid separately. Further,

on average, related care services do not represent a significant percentage of services furnished by a CRNA.

We reexamined this issue in the context of the physician fee schedule payment system that takes effect January 1, 1992. In the final physician fee schedule regulation published in the **Federal Register** on November 25, 1991, (56 FR 59502), we stated that we will recognize separate payment for the same related care services furnished by anesthesiologists or CRNAs subject to certain conditions. Separate payment can be made for these services regardless of whether they are furnished alone or in connection with the physician anesthesia service.

Anesthesia service furnished by CRNAs can be medically directed or nonmedically directed, but related care services are medical or surgical services, not anesthesia procedures, and are therefore not subject to the general medical direction rules. If a CRNA typically furnishes anesthesia services without medical direction, we assume that the CRNA furnishes the related care service without the involvement of an anesthesiologist. If a CRNA typically furnishes anesthesia services under medical direction, we will assume that the anesthesiologist will furnish the related care service, and we will not pay for the CRNA's involvement with the related care procedure. Thus, payment for related care services furnished by CRNAs on or after January 1, 1992, will be consistent with payment for physicians.

B. Rural Hospitals and CRNAs

Comment: The AHA, State hospital associations, and other commenters recommended that the procedures threshold of 250 anesthesia cases should be substantially increased so that rural hospitals that otherwise meet the eligibility criteria can receive the reasonable cost exemption. The AHA specifically suggests that HCFA set the threshold at 1,300 anesthesia procedures or higher.

Response: Section 608(c) of Public Law 100–485 did allow the Secretary to establish the anesthesia procedures threshold at a level higher than 250 procedures. We did not initially propose a level higher than 250 procedures because we had no evidence or information from the hospital industry suggesting a more appropriate threshold.

The AHA's recommendation would have the effect of allowing all rural hospitals to qualify for reasonable cost payments for CRNA services. The fact that section 608(c) of Public Law 100–485 imposed a specific criterion for the hospital's anesthesia caseload volume is an indication that Congress did not intend for all rural hospitals to qualify.

Subsequently, section 6132 of Public Law 101–239 raised the threshold from 250 procedures to 500 procedures for rural hospitals, to be effective for anesthesia services furnished on or after January 1, 1990. Under section 6132 of Public Law 101–239, a rural hospital that qualified and was paid on a reasonable cost basis for CRNA services during calendar year 1989 can continue to be paid on a reasonable cost basis for CRNA services furnished during calendar year 1990 if it can establish before January 1, 1990 that it did not provide more than 500 surgical procedures, both inpatient and outpatient, requiring anesthesia services during 1989. A rural hospital that was not paid on a reasonable cost basis for CRNA services furnished during calendar year 1989 can be paid on a reasonable cost basis for CRNA services furnished during calendar year 1990 if:

- As of January 1, 1988, the hospital employed or contracted with a CRNA (but not more than one full-time equivalent CRNA); and
- In both 1987 and 1989, the hospital had a volume of 500 surgical procedures or fewer, including inpatient and outpatient procedures, that required anesthesia services.

For both groups of hospitals, each CRNA employed by or under contract with the hospital must agree in writing not to bill on a fee schedule basis for patient care services furnished at the hospital.

Comment: Several commenters requested that HCFA extend the deadline for a rural hospital to apply for eligibility for payment on a reasonable cost basis for calendar year 1989 to 60 days after publication of this final rule.

Response: Section 608(c) of Public Law 100–485 specifically provided that a hospital must have applied before April 1, 1989, to receive reasonable cost payments for CRNA services furnished in 1989. The intermediaries advised hospitals of the procedure for continuing reasonable cost payments in December 1988. This process provided a hospital with a sufficient period of time, approximately 4 months, in which to apply to its intermediary. Moreover, approximately 25 percent of rural hospitals claiming costs for CRNA services initially qualified for reasonable cost payments. We find no reason to extend the initial period during which rural hospitals could have applied.

Comment: Several commenters suggested that because of confusion surrounding the implementation of section 608(c) of Public Law 100–485, some rural hospitals that would otherwise have been eligible for reasonable cost payments might have billed for CRNA services under Part B after January 1, 1989. These commenters requested that any rural hospital that could document by April 1, 1989, that it met the appropriate criteria should be allowed to continue to be paid on a reasonable cost basis regardless of whether bills were submitted prior to that date for the hospital's CRNA services.

Response: One of the legislative criteria for a qualifying rural hospital is that each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services at the hospital. If the CRNA or the hospital does not satisfy this requirement or allows Part B billing to occur, then one of the qualifying criteria is not met.

The Program Memorandum issued to the intermediaries for distribution to rural hospitals (Transmittal No. A88–32) in December 1988 entitled "Direct Medicare Billing by CRNAs" also highlighted this point. It specifically noted the following:

> "Hospitals that are considering the continuation of reasonable costs for anesthesia services furnished by CRNAs on or after January 1, 1989, must ensure that CRNAs do not bill under the fee schedule for anesthesia services furnished on or after January 1, 1989, but before the hospital's election. If the CRNA or the CRNA's employer or contractor bills under the fee schedule, it will preclude the hospital's opportunity to elect reasonable costs for CRNA services."

In view of the foregoing, we are not accepting the commenters' recommendation. Also, since the Congress made changes in Public Law 101–239 that are effective January 1, 1990, it appears that Congress also did not see a need to grant hospitals relief from the prior provision.

Comment: Rural hospitals that wish to elect reasonable cost payment for CRNA services effective January 1, 1990, must demonstrate that the volume of anesthesia procedures does not exceed 500 procedures for the previous 12 months. However, the statistics for that 12-month period will not be available at the time providers are to be notified. One commenter suggested that the language of the regulation be revised to state that nine months' data, annualized, will be acceptable to demonstrate continued eligibility for reasonable cost payment.

Response: We are accepting this commenter's recommendation that 9 months' worth of data on anesthesia

cases, that is, from January 1st to September 30th of the preceding year, be acceptable for determining the annual number of anesthetics. However, we will apply this requirement for hospitals that wish to qualify for calendar years 1991 or later. Because of the short timeframe between enactment of Public Law 101–239 and hospitals' compliance with the requirements for reasonable cost payments for CRNA services furnished during 1990, we allowed hospitals to establish their qualification before March 1, 1990 instead of January 1, 1990. As a result, qualification for 1990 is based on the calendar year 1989 anesthesia caseload.

Comment: To qualify during 1989, a rural hospital must have employed or contracted with a qualified nonphysician anesthetist as of January 1, 1988. One commenter suggested that if contracts are not in writing, HCFA should require that oral contracts be committed to writing and signed by both parties. This will enable intermediaries to determine whether a provider meets the requirements and will facilitate any future auditing.

Response: We agree with this comment and find it necessary, for compliance and auditing purposes, that oral agreements for the provision of anesthesia services be committed to writing and signed by both parties.

Comment: One commenter asked at what point a rural hospital that qualified for this exception can change from reasonable cost to the fee schedule payment system for CRNA services.

Response: The election of reasonable cost payment for CRNA services applies to the calendar year for which the election is made.

Comment: Section 5261.I. of the Medicare Carriers Manual indicates that the intermediary will inform the carrier of the hospital's decision to elect reasonable cost. One commenter, however, pointed out that the instructions do not assign responsibility for obtaining and maintaining the signed agreements by CRNAs not to bill Part B.

Response: The hospital is responsible for furnishing the intermediary with signed CRNA/hospital agreements that there will be no billing to Part B. We are not requiring the intermediary to forward copies of the signed agreements to the carrier. Rather, the intermediary must notify the carrier of the qualified hospitals and their CRNAs.

Comment: One commenter asked what action is taken if the intermediary discovers that a provider actually does not meet the criteria for reasonable cost payments for calendar year 1989.

Response: The intermediary must recover reasonable cost payments from the hospital. The hospital or its CRNA must bill under the CRNA fee schedule for CRNA services furnished on or after January 1 of the affected calendar year.

Comment: Some commenters asked whether a rural hospital which did not qualify for reasonable cost payments for CRNA services during 1989 could elect reasonable cost payments for CRNA services in calendar years 1990 or 1991.

Response: Under section 608(c) of Public Law 100–485, only those rural hospitals that qualified in 1989 could continue to elect reasonable cost payment for CRNA services in 1990 and 1991. Section 6132 of Public Law 101–239 removes this restriction by allowing a rural hospital to qualify annually based on its anesthesia caseload from the immediately preceding year. It also removes the earlier expiration provision that allowed hospitals to receive reasonable cost payments only through calendar year 1991. Section 6132 of Public Law 101–239 imposes no expiration date. A rural hospital can qualify and continue to be paid on a reasonable cost basis for CRNA services for calendar years beyond 1991 if the hospital can establish that before January 1, 1990, it did not provide more than 500 surgical service procedures, both inpatient and outpatient, requiring anesthesia services during the immediately preceding year.

Comment: We proposed to reduce the nonmedically-directed CRNA fee schedule rates by 5.7 percent to account for low volume rural hospitals electing reasonable cost payments for CRNA services. This was necessary because the AANA supplied us with data from rural hospitals with varying anesthesia caseloads. The rural hospitals with 250 or fewer anesthesia cases would raise the level of the nonmedically-directed CRNA conversion factor, yet these hospitals would be paid on a reasonable cost basis rather than on a fee schedule basis. Our estimate was based on data from the 1987 HCFA Survey of PPS–2 hospitals claiming reasonable cost payments. Several commenters objected to the methods used to calculate our estimate.

Response: Section 6132 of Public Law 101–239 eliminated the budget neutrality provision for rural hospitals, which required that we adjust CRNA fee schedule rates to reflect the election of reasonable cost. As a result, we are not, as we did in the proposed rule, providing an additional "budget neutrality" adjustment to either the medically-directed rates or nonmedically-directed rates.

C. Monitored Anesthesia Care

The Medicare Carriers Manual (HCFA-Pub. 14–3) recognizes as a covered physician service monitored anesthesia care performed by or medically-directed by a physician. Under section 8310.E. of the Medicare Carriers Manual, monitored anesthesia care means the intraoperative monitoring of the patient's vital physiological signs by a physician or by a qualified individual under the medical direction of a physician. Monitored anesthesia care is provided in anticipation of the need for administration of general anesthesia or in the case of a patient's development of adverse physiological reaction to the surgical procedure. It also includes performance of a pre-anesthetic examination and evaluation, prescription of the anesthesia care required, administration of necessary oral or parenteral medications (for example, Atropine, Demerol, or Valium), and provision of indicated postoperative anesthesia care. The fact that the physician personally furnished or medically-directed the monitored anesthesia care does not automatically mean the monitored anesthesia care is a covered Part B service. The monitored anesthesia care service must be reasonable and medically necessary under the given circumstances.

The proposed rule did not address the issue of payment for monitored anesthesia care performed by a CRNA.

Comment: Commenters specifically asked whether a CRNA can be paid under the fee schedule for performing monitored anesthesia care with or without medical direction.

Response: We have considered these comments and are specifically adopting the policy that a CRNA can be paid under the CRNA fee schedule for performing monitored anesthesia care that is reasonable and medically necessary. Medicare will pay for a CRNA performing monitored anesthesia care with or without the medical direction of an anesthesiologist. We will specifically incorporate this policy in the manual instructions to implement the CRNA fee schedule.

D. Anesthesia Care Furnished to a Single Patient by a CRNA and an Anesthesiologist

Our prior policies on payment for physician anesthesia services recognize that the anesthesia service may be:

- Personally performed by an anesthesiologist;

• Performed by a teaching anesthesiologist under an "attending physician" relationship;

• Performed by an anesthesiologist with assistance provided by an anesthetist (Under this circumstance, the anesthesia service is deemed to have been personally performed by the anesthesiologist); or

• Medically-directed by an anesthesiologist.

Under section 1842(b)(13) of the Act, medical direction refers to the circumstances under which an anesthesiologist medically directs two, three, or four concurrent procedures involving qualified anesthetists. Thus, we have always viewed medical direction as occurring with concurrent procedures, not with a single anesthesia procedure.

The instructions in section 5261.G of the Medicare Carriers Manual to implement the proposed CRNA fee schedule recognized that both a CRNA and an anesthesiologist may be involved in a single anesthesia procedure. The policy in this section is directed to circumstances under which it is necessary for both an anesthesiologist and a CRNA to be continuously involved in the anesthesia care of the patient. Section 5261.G of the Medicare Carriers Manual provides that if an anesthesiologist and an anesthetist are both involved in a single anesthesia procedure, the procedure is considered personally performed by the anesthesiologist. No separate payment is recognized for the CRNA's service unless the carrier has received medical documentation showing that the involvement of both the anesthesiologist and the anesthetist are medically necessary.

Comment: Commenters pointed out that the CRNA fee schedule legislation provides for fee schedule payment for all medically necessary anesthesia services furnished by CRNAs, and it does not eliminate payments to CRNAs based on activities of an anesthesiologist. The commenters suggested that we expand medical direction to cover a single procedure involving an anesthesiologist and a CRNA. In this way, each anesthesia practitioner would be paid for the service he or she furnishes.

Response: As noted above, medical direction refers to the circumstances under which an anesthesiologist medically directs two, three, or four concurrent procedures involving qualified anesthetists. For medical direction to be covered, the anesthesiologist must perform the activities described in § 405.552. We are not proposing to expand the concept of medical direction to apply when an anesthesiologist and anesthetist provide services during a single procedure. We believe that our interpretation is consistent with section 1842(b)(13). Moreover, we are concerned that recognizing medical direction in a single anesthesia procedure would encourage inefficiencies in anesthesia practice arrangements. Our policies should not encourage the involvement of both practitioners in a single anesthesia procedure if either practitioner could appropriately furnish the service alone. We do, of course, recognize that there will be limited situations where it will be medically necessary for an anesthesia procedure to be furnished by both an anesthesiologist and a CRNA. Under these circumstances, we will continue to recognize payments for the services of each practitioner. This principle has been incorporated into our final regulations.

E. Supervision of CRNAs by Physicians Other Than Anesthesiologists

In the proposed regulation, we provided for the elimination of medical direction payments for surgeons who perform surgery and also supervise the services of a CRNA. We provided that the oversight of a CRNA's services by a surgeon is a quality control function that represents either a service to the provider of the type described in § 405.480(a) or an ASC facility service.

We did not receive any unfavorable comments on this proposal. Anesthesiologists who commented supported the elimination of medical direction payments to surgeons.

Comment: One commenter recommended that the regulation text specifically include the provision that the surgeon's supervision of the CRNA is covered only as an ASC facility service.

Response: We are including in the regulations at § 416.61 the provision that the surgeon's supervision of the CRNA is covered only as an ASC facility service. If the surgeon bills the ASC patient for a supervisory anesthesia service, the ASC will be found in violation of its participation agreement with HCFA (see § 416.35), which may result in termination of that agreement.

F. Bad Debts

Section 1833(l)(5)(C) of the Act requires that a hospital that files a claim or a request for payment for the services of a CRNA may not consider any uncollected coinsurance amount for a CRNA service a bad debt. The proposed regulations included a revision to § 413.80 to implement this provision.

Comment: One commenter indicated that the Provider Reimbursement Manual, Part I, (HCFA-Pub. 15–1) does not recognize bad debts associated with physician services. The commenter further pointed out that since CRNA services are not physician services, but rather hospital services, this provision is not consistent with the Provider Reimbursement Manual, Part I instructions in Chapter 3 concerning bad debts attributable to hospital services.

Response: Previously, anesthesia services furnished to hospital patients by CRNAs employed by the hospital or obtained under arrangements were covered as hospital services. The CRNA fee schedule legislation specifically creates a new coverage category for CRNA services. Since CRNA services are no longer considered hospital services, the PRM policy on uncollected deductibles and coinsurance associated with hospital services does not apply.

G. Billing for Anesthesia Time

Payment under the CRNA fee schedule is made on the basis of a conversion factor multiplied by the sum of base and time units. One time unit is allowed for each 15 minutes of anesthesia time. Anesthesia time begins when the physician or anesthetist begins to prepare the patient for induction of anesthesia and ends when the patient may be safely placed under post-operative supervision and the physician or anesthetist is no longer in personal attendance. The time unit basis of payment implies that the anesthetist or physician must furnish continuous and uninterrupted anesthesia care. Although we did not receive any specific comments on the time unit basis of payment, we were advised of situations that may occur in the outpatient department of a hospital or in an ASC in which a CRNA is not in continuous attendance with the patient.

Whenever the CRNA is not continuously attending to the patient immediately preceding induction up to postrecovery, the CRNA must appropriately note that a reduced service has been furnished. The carrier will appropriately recognize time units only for the anesthesia time spent with the patient by the CRNA or determine payment on another basis, based on the advice of the carrier's medical consultants.

As previously noted, it is our intention to ensure consistency and similarity between the CRNA payment system and the payment system for physician anesthesia services. In both the proposed regulations to implement the CRNA fee schedule and the uniform

relative value guide, we discussed three OIG options, on which we solicited comments, to change the current time unit policy. One of these options was to recognize only the actual time associated with a fractional time interval.

Section 6106 of Public Law 101–239 revised the method by which time units are counted for anesthesia services furnished by either physicians or CRNAs. That is, for anesthesia services furnished on or after April 1, 1990, the time unit is counted based on the actual time of the fractional time unit. Previously a fractional time unit was counted as a full time unit. Since we previously solicited comments on this matter and the legislation is sufficiently clear and detailed as to be self-implementing, we are finalizing this policy without an additional comment period. We are revising § 414.450(c) to reflect the policy that recognizes only actual time associated with a fractional time unit. We are instructing the carriers to calculate time units to one decimal place. The example provided below illustrates the calculation of a fractional time unit.

Example: A CRNA who is not medically directed furnishes an anesthesia procedure after April 1, 1990. The procedure has a base unit of 8 units and lasts 68 minutes or 4.5 units. The nonmedically directed CRNA rate is $14. The CRNA fee schedule amount is $147.00, or $14×10.5 units. The carrier pays the CRNA § 117.60, which is 80 percent of $147.00.

In the final rule to implement the resource-based physicians' fee schedule effective January 1, 1992, published in the **Federal Register** on November 25, 1991 (56 FR 59502), we decided to continue actual time as a separate payment element for both CRNA and physician anesthesia services. We have also revised the definition of anesthesia time to lessen the wide variation in reported anesthesia times.

Comment: Some commenters asked how payment would be determined for the CRNA's services when an anesthesiologist does not medically-direct the entire anesthesia case. For example, would the CRNA be paid at the medically-directed rate during the portion in which the physician is medically-directing the case and at the nonmedically-directed rate when the anesthesiologist is not medically-directing the case?

Response: We are not establishing a specific national payment rule for these circumstances because they are not the normal circumstances for anesthesia practice. Under these circumstances, the carrier has the authority to make a payment determination based on all the facts surrounding the case. Under these circumstances, the CRNA must indicate on the claim the time periods during which he or she was medically directed and the time periods during which he or she was not medically directed. If, for example, the anesthesiologist is present 50 percent or more of the total time in a medically-directed case, the carrier may consider the entire case to be a medically-directed case.

Comment: At least one commenter asked whether the medically-directed CRNA conversion factor would be recognized for CRNA services when the anesthesiologist supervises more than four concurrent procedures. HCFA does not recognize medical direction if the anesthesiologist is involved in more than four concurrent procedures.

Response: CRNA fee schedule payments are calculated using the medically-directed conversion factor for CRNA services regardless of the number of concurrent procedures directed or supervised by an anesthesiologist. As a practical matter, as long as anesthesiologists are involved with CRNAs in anesthesia services, the CRNA would consider the procedure to be medically directed or medically supervised. The CRNA is not generally aware of the number of concurrent procedures being directed or supervised.

H. Payment for CRNA Education and Training Costs

Comment: The AANA and others stated that the CRNA fee schedule legislation, the January 26, 1989 proposed regulations, and the Carriers Manual instructions failed to explain how payment will be made for nurse anesthetist educational programs. The AANA asked for a clarification of this policy.

Response: The CRNA fee schedule does not alter the methodology under which hospitals are paid for the cost of approved CRNA educational programs. That is, a hospital continues to be paid on a reasonable cost basis for allowable costs associated with an approved CRNA educational program it operates. Costs incurred by a hospital in conjunction with an approved CRNA educational program that it does not operate are not paid on a reasonable cost basis. (The cost of these educational activities is recognized as a normal operating cost and payment for these services is made through the prospective payment system for hospital inpatients.) Rules concerning payment to hospitals for the cost of educational activities are located at § 413.85.

Comment: The AANA and several other commenters recommended that Medicare pay the costs of approved CRNA training programs under the same methodology used for paying the cost of approved graduate medical education training programs.

Response: The services of interns and residents under approved graduate medical education training programs are paid for differently than the services of nonphysicians engaged in approved paramedical training programs. The way in which costs of approved paramedical training programs are paid to a hospital is described in the previous response (see § 413.85). Section 1886(h) of the Act provides that for cost reporting periods beginning on or after July 1, 1985, services of interns and residents in approved training programs are paid on the basis of a prospectively determined rate, which is calculated as a per intern/resident amount. Section 1886(h) of the Act does not extend this treatment to approved CRNA training programs or to approved paramedical training programs.

Comment: The AANA and other commenters requested that a teaching or supervising CRNA receive payment under the CRNA fee schedule for each of two concurrent cases involving student nurse anesthetists. (This comment was prompted by the proposed policy for teaching anesthesiologists, which was included in our February 7, 1989 proposed regulations on teaching physicians. Under those proposed regulations, we would have paid an unreduced amount when the teaching anesthesiologist is involved in two concurrent cases with residents.)

Response: We did not finalize the policy proposed in the February 7, 1989 NPRM on teaching physicians. Instead, in the final physician fee schedule regulations published November 25, 1991, we stated that we would continue the policy that allows unreduced payments for two concurrent cases involving residents through December 31, 1993 (56 FR 59563). This would give teaching hospitals the opportunity to adjust their practices. For services furnished after that date, we will uniformly apply medical direction payment rules to concurrent procedures regardless of whom the anesthesiologist is directing.

We understand that, at times, a teaching CRNA may supervise two concurrent cases involving student nurse anesthetists. The initial CRNA fee schedule legislation (section 9320 of Pub. L. 99–509) did not address the issue of payment for the services of CRNAs who teach student nurse anesthetists. Moreover, while the 1990 CRNA fee schedule legislation provides for two levels of payment for CRNAs, a rate for

medically-directed CRNAs and one for nonmedically-directed CRNAs, it also does not address the teacher/student anesthetist issue. Thus, there is no specific statutory provision that requires that we pay a teaching CRNA an unreduced or a reduced fee for each of two concurrently supervised cases.

The law, however, is specific with regard to medical direction services of anesthesiologists. It provides that under specified circumstances, payment is made for medical direction, and that this payment rate is lower than the payment rate that would apply if the anesthesiologist personally performed the service. Thus, while we have the specific authority to make payment, although reduced, for the anesthesiologists' involvement in concurrent cases, there is not similar authority for the teaching CRNA's involvement in concurrent cases.

We also note that, prior to the implementation of the CRNA fee schedule, the services of hospital employed CRNAs or those under contract with a hospital had been paid to the hospital on a reasonable cost basis. However, we did not provide, under this system, for payments, even on a cost basis, for the teaching CRNA's involvement in two concurrent cases. Since we have not historically provided for payment for the CRNA's involvement in two concurrent cases and there is no statutory requirement that we must do so, we are not providing for separate fee schedule payment for the teaching CRNA's involvement in each of two concurrent cases.

Comment: The AANA and other commenters recommended that medical direction payments be recognized if an anesthesiologist directs concurrent procedures, some of which involve student nurse anesthetists. These commenters suggest that this would represent a continuation of our current policy.

Response: We have addressed this issue in § 405.552 (a)(1)(iv) of the final physician fee schedule regulations published in the **Federal Register** on November 25, 1991 (56 FR 59502). We have revised the regulation text to allow an anesthesiologist to medically direct a qualified individual as defined in program operating instructions. In the operating instructions, we will consider student nurse anesthetists to be qualified individuals as long as the anesthesiologist is not directing more than two concurrent procedures involving student nurse anesthetists.

Comment: Section 4048 of Public Law 100–203 provides for a reduction in the base units for the physician's concurrent medical direction of anesthesia services involving qualified anesthetists and furnished on or after April 1, 1988 but before January 1, 1991. (As noted, under current policy, a qualified anesthetist situation can exist when a teaching CRNA continuously supervises the services of a student CRNA.) The number of base units associated with the physician service is reduced by 10 percent for each of two concurrent procedures, by 25 percent for each of three concurrent procedures, or by 40 percent for each of four concurrent procedures. The AANA recommended that the 10 percent, 25 percent, and 40 percent cuts not apply when an anesthesiologist medically-directs concurrent procedures involving both a teaching CRNA and a student anesthetist, or only a student anesthetist. Presumably, this would encourage anesthesiologists to become involved in CRNA training programs and would not provide a financial incentive to utilize anesthesia interns and residents instead of teacher CRNAs and student anesthetists.

Response: Section 4048 of Public Law 100–203 specifically refers to reductions in base units of concurrent procedures involving "nurse anesthetists". It does not provide for any exceptions to the base unit reductions. Therefore, we will reduce base units for medical direction services in circumstances involving the anesthesiologist's concurrent medical direction of procedures involving teaching and student CRNAs.

Comment: Proposed regulations published on February 7, 1989 (54 FR 5946), provide that if all physicians in a teaching hospital elect assignment for payment of all physician services, then the customary charge for physician services would be calculated at 90 percent of the prevailing charge. The 90 percent payment rate is specifically provided for in section 1842(b)(7) of the Act. Some commenters requested that CRNAs also be paid 90 percent of the fee schedule amount since they are required to accept assignment for all cases.

Response: We believe there is some confusion as to the application of the 90 percent rate. For teaching hospitals where assignment is elected for all physician services, the customary charge would be 90 percent of the prevailing charge. If this customary charge becomes the basis for the reasonable charge, the reasonable charge would be the product of 80 percent, 90 percent, and the prevailing charge (80 percent × 90 percent × the prevailing charge). If this same methodology were applied to CRNA services, payment would be 80 percent × 90 percent × the fee schedule, (which would result in a lesser amount than the current payment amount). As noted, the 90 percent payment rate is specifically established by section 1842(b)(7) of the Act and is applicable by its own terms only to physician services furnished by teaching physicians in a hospital. It does not apply to nonphysician services such as CRNA services. Instead, section 1833(a)(1)(H) of the Act specifically provides that after the deductible is met, CRNA services are paid at 80 percent of the lesser of the actual charge, the fee schedule amount, or the amount recognized for the same anesthesia service furnished by an anesthesiologist.

I. Definition of Categories of Anesthetists

We proposed defining "CRNA" as a registered nurse who is licensed as a professional registered nurse by the State in which he or she practices and meets any other licensure requirements the State imposes with respect to nonphysician anesthetists, and is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists or has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

This definition relied on certification by either of the two nationally recognized certifying bodies for nurse anesthetists, and thus reflected the provision of section 1861(bb) of the Act that authorizes the use of requirements established by a national organization for the certification of nurse anesthetists.

Comment: A commenter stated that the Council on Certification of Nurse Anesthetists (the Council) allows graduates of approved nurse anesthesia programs to be considered certification-eligible, without meeting further criteria, for 24 months after completion of their training. The commenter also stated that 24 months is the maximum time period for which any State allows recent graduates to practice without passing a certification examination. In the interest of consistency with the Council on requirements and in consideration of the provision of section 1861(bb)(2) of the Act, which allows use of the same requirements as those established by a national organization for the certification of nurse anesthetists, the commenter recommended that we allow recent graduates of approved training programs who have not successfully completed the certification examination to be considered CRNAs for up to 24

months after graduation (rather than 18 months as proposed) if to do so is consistent with State law.

Response: We agree that it would be appropriate to adopt a less restrictive rule on how long recent graduates may practice and have revised the regulations as suggested by the commenter.

Comment: A commenter supported our proposed interpretation of section 1861(bb)(2) of the Act that requires that a CRNA be licensed by the State as a registered nurse (54 FR 3805). The commenter opposed any interpretation that would require a CRNA to be licensed as a CRNA and stated that this would preclude payment to CRNAs in some 40 States.

Response: We agree with this comment and have adopted the provision of the proposed regulations that require an individual who wishes to be considered a CRNA to be licensed as a professional registered nurse (rather than as a CRNA) by the State in which he or she practices and to meet any other licensure requirement the State imposes with respect to nonphysician anesthetists.

Comment: A commenter objected to the provision in the proposed rule which restated the part of the hospital conditions of participation that provides that anesthesia administration by a CRNA must be done under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed. The commenter stated that the provision is contrary to the laws of some States that permit CRNAs to practice without supervision by a physician or other practitioner and that quality of care studies show there is no significant difference in outcomes whether the care is provided by CRNAs alone, anesthesiologists and CRNAs together, or anesthesiologists alone. In support of the latter statement, the commenter submitted synopses of several studies that addressed anesthesia care outcomes as they relate to the qualifications of the providers of care (anesthesiologists and CRNAs). These studies included a Report to Congress by the National Academy of Sciences (House Committee Print No. 36, "Health Care for American Veterans", p. 156, dated June 7, 1977); a study concerning anesthetic-related deaths from 1969 to 1976 by Albert Bechtoldt, Jr. and the Anesthesia Study Committee (North Carolina Medical Journal, April 1981); a study by Stanford Center for Health Care Research, "The Effect of the Provider," (published in Health Care Delivery in Anesthesia (1980), p. 137); and "Anesthesiology: Man, Machines and Morbidity" by Dr. Joseph A. Ricci (published in Physician Notes, December 1985). The commenter stated that these studies found no significant difference in anesthesia care outcomes between care provided by anesthesiologists and CRNAs.

Another commenter stated that there is no State that allows CRNAs to administer anesthesia without medical supervision although in some States CRNAs are allowed to practice on an independent contract or freelance basis without an anesthesiologist being present.

Response: We reviewed these comments carefully but did not make any changes to the proposed rule based on them. Regardless of whether some State laws allow CRNAs to practice independently, the laws of most States still require nonphysician anesthetists to administer anesthesia only under the supervision of a doctor of medicine or osteopathy. Moreover, the conditions of participation are intended to be minimum requirements that promote patient health and safety. We do not believe it would be practical to adopt as a national minimum standard for care a practice that is allowed in only some States. We also reviewed the information submitted in support of the statement that studies show no significant difference in outcomes according to whether services are performed by CRNAs alone, CRNAs and anesthesiologists together, or anesthesiologists alone. While some of the information supports the conclusion that similar results occur under each of these three sets of circumstances, we note that this commenter's submittal also states that existing studies of this issue do not correct for the differences in outcome caused by differences in age and in severity of illness among patients. We believe it would be wrong to conclude solely from the studies mentioned above that oversight by an anesthesiologist does not contribute significantly to the safety and quality of care. In view of the lack of definitive clinical studies on this issue, and in consideration of the risks associated with anesthesia procedures, we believe it would not be appropriate to allow anesthesia administration by a nonphysician anesthetist unless under supervision by either an anesthesiologist or the operating practitioner. Therefore, we did not adopt this comment.

We are adopting a change in the definition of "CRNA" that was not requested by commenters. Under this approach, a person could be designated as a CRNA for Medicare purposes if he or she: (1) Is licensed as a registered professional nurse by the State in which he or she practices, (2) meets any licensure requirements that State imposes with respect to nonphysician anesthetists, (3) has graduated from a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs, or of such other accreditation organization as may be designated by the Secretary, and (4) has passed a certification examination of the Council on Recertification of Nurse Anesthetists, or such other certification organization as may be designated by the Secretary.

The examination requirement would not apply to otherwise qualified persons who have graduated within the past 24 months from a nurse anesthesia educational program that meets the standards of a certification organization as described above.

Comment: A commenter objected to the definition of anesthesiologist's assistant that was included in the proposed regulations. The commenter stated that the definition is not consistent with that used by the Committee on Allied Health Education and Accreditation (CAHEA), which is the publicly constituted and recognized body that oversees the accreditation process for anesthesiologist's assistant educational programs. The commenter also stated that the proposed provision, which requires that the anesthesiologist's assistant be under the direct supervision of an anesthesiologist who is physically present, does not accurately reflect actual patterns of practice in those States where anesthesiologist's assistants are used. The commenter also recommended that we adopt a definition that does not specify the number of years of education an anesthesiologist's assistant must have while permitting recognition of anesthesiologist's assistants who received their training at either of the pilot anesthesiologist's assistants programs, that is, the program previously conducted at Case Western Reserve and the Emory University program.

Another commenter expressed different views on the treatment of anesthesiologist's assistants. This commenter stated that anesthesiologist's assistants are trained to work only under the direction of an anesthesiologist in no more than a one-to-two ratio. The commenter stated that, therefore, anesthesiologist's assistants would not be eligible for payment for nonmedically-directed care or for related care services. The commenter recommended that anesthesiologist's assistants not be designated as

"anesthetists" in our regulations and that their services be discussed in separate regulations, in order to emphasize the differences between their scope of practice and that of CRNAs.

A third commenter, representing a national anesthesiologist organization, explicitly avoided taking a position on the number of anesthesiologist's assistants to be supervised by an anesthesiologist. The commenter stated that the organization has no policy as to medical direction ratios, either for CRNAs or anesthesiologist's assistants, except to state that medical direction of CRNAs should be in such a geographic and numerical relationship as to make possible the continual exercise of the medical judgment of the anesthesiologist.

Response: After considering the comments we received on this issue, we have decided to define an anesthesiologist's assistant as a graduate of a medical school-based anesthesiologist's assistant educational program that is both accredited by CAHEA and includes approximately two years of specialized basic science and clinical education in anesthesia that builds on a premedical undergraduate science background. In addition, the anesthesiologist's assistant must work under the direction of an anesthesiologist and must comply with all applicable requirements of State law, including any licensure requirements the State imposes on nonphysician anesthetists.

In adopting this definition, we took several factors into account. First, we believe that adopting a definition consistent with that used by a national accrediting organization such as CAHEA will help ensure that our definition reflects current medical practice and will make it possible to use a definition that is less prescriptive with respect to the length of these programs than the current definition in the regulations at § 482.52(a)(5). We also believe it is desirable to adopt a definition which encompasses currently practicing anesthesiologist's assistants as well as future graduates.

We considered, but did not adopt, the comments suggesting that anesthesiologist's assistants be permitted to work in no more than a one-to-two ratio (that is, one anesthesiologist to two anesthesiologist's assistants). Our concern is to define the term "anesthesiologist's assistant" in a way that will protect patient health and safety and permit payment for anesthesia and related care in a manner that is reasonable, equitable, and consistent with other requirements of the Medicare law. We believe we can accomplish this goal most effectively by defining the term "anesthesiologist's assistant" as described above and by permitting anesthesiologist's assistants to function under the same general requirements as CRNAs, except for the additional requirement for direction by an anesthesiologist and any additional restrictions that may be imposed by State law or by medical staff rules in settings such as hospitals and ASCs.

We also did not accept the comments recommending that anesthesiologist's assistants not be designated as anesthetists and thus not be governed by the same regulations as CRNAs. Section 1861(bb)(2) of the Act explicitly states that anesthesiologist's assistants are to be considered CRNAs for purposes of the Medicare law, and we do not have authority to establish a separate designation or set of regulations for them.

Comment: A commenter noted that in some States, registered nurses who are not fully certified CRNAs or recent graduates of approved training programs are permitted by State law to administer anesthesia if they meet certain experience requirements and comply with any applicable licensing requirements. The commenter stated that there is no indication that Congress intended to prohibit anesthesia administration by these individuals and recommended that we include them in the definition of an anesthesiologist's assistant.

Response: By adopting a definition of anesthesiologist's assistant which relies heavily on completion of a CAHEA-accredited program, we have allowed for variation in the type and length of training required of anesthesiologist's assistants. However, we do not believe it would be appropriate to apply the anesthesiologist's assistant designation to a person who has no formal, specific training as an anesthesiologist's assistant and whose knowledge of anesthesia administration is based largely or entirely on informal or on-the-job training. Therefore, we did not adopt this comment. Moreover, because under section 1861(bb) of the Act the definition of services of a CRNA refers only to CRNAs and anesthesiologist's assistants, we do not believe there is any other basis on which anesthetists who are not qualified as either CRNAs or anesthesiologist's assistants could be permitted to furnish these services.

J. Medical Direction of a Qualified Anesthetist

The regulations at § 405.552(a)(1)(iv) provided that one of the conditions for payment to a physician for a medical-direction service was the requirement that the physician "ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual." The preamble of the March 2, 1983 final rule (48 FR 8926) had indicated that a qualified individual could be a CRNA, anesthesiologist's assistant, intern or resident, or other qualified individual, consistent with State law and license requirements. We are making a change to § 405.552(a)(1)(iv) to replace the term "qualified individual" with "CRNA or an anesthesiologist's assistant". (As noted in a previous response, we will recognize medical direction when an anesthesiologist medically directs concurrent cases, one of which involves a student nurse anesthetist.) We are also including an intern or a resident as a qualified individual who can be medically directed.

The only individuals qualified to be paid under the CRNA fee schedule are CRNAs and anesthesiologist's assistants. Payment for the services of interns and residents is made to a hospital based on a prospectively determined rate for each intern or resident. Services furnished by other individuals, such as a registered nurse who is not a CRNA but licensed to administer anesthesia under State law, are neither paid under the fee schedule nor paid on a reasonable cost basis. As a result of our revision, the medical direction service furnished by a physician is not covered if the physician directs an individual other than a CRNA, a student anesthetist, anesthesiologist's assistant, intern or resident.

K. Update of the CRNA Fee Schedule

Section 1833(l)(1) of the Act provides that the CRNA fee schedule conversion factors are updated by the MEI. However, section 6107(a) of Public Law 101–239 delayed the implementation of the MEI update, including the MEI update of the CRNA fee schedule conversion factors for CRNA services furnished on or after January 1, 1990, to apply instead to CRNA services furnished on or after April 1, 1990. Section 6107(b) of Public Law 101–239 also provided that the percentage increase in the MEI used to update CRNA conversion factors applicable to CRNA services furnished on or after April 1, 1990, is zero. Thus, the 1989 final rates are also effective for CRNA services furnished in calendar year 1990.

V. Summary of Changes

A. Revised CRNA Fee Schedule Conversion Factors

- We are using a more current AANA survey to calculate the basic CRNA conversion factors. The AANA's 1986 survey was used in the proposed rule. The AANA's 1987 survey is used in this final rule.
- We are making a different adjustment for fringe benefits and overhead. In the proposed rule, an adjustment of 27 percent was made to take into account both fringe benefits and overhead. In this final rule an adjustment of 32 percent is made for both fringe benefits and overhead.
- We are using a different trend factor to update the basic conversion factors. In the proposed rule, the 1986 conversion factors were adjusted by a factor of 1.19, allowing for a 6.0 percent increase in CRNA salaries per year for 1987, 1988, and 1989. In this final rule, the 1987 conversion factors are adjusted by a factor of 1.18, allowing for a 9.4 percent increase in 1988 and an 8.2 percent increase in 1989.
- We have computed the nonmedically-directed conversion factors (with exceptions noted) on the basis of State-specific nonmedically-directed CRNA salaries, the State-specific average caseload of nonmedically-directed CRNAs, and the national average number of base and time units per case for a nonmedically-directed CRNA (see § 414.451(c)). (In the proposed rule, the nonmedically-directed conversion factors were computed by multiplying the State-specific medically-directed rate by a factor of 1.375.)
- We decreased the proposed nonmedically-directed conversion factors by 5.7 percent to account for rural hospitals that elect reasonable cost payments for CRNA services. Section 6132 of Public Law 101–239 eliminated the budget neutrality adjustment that existed previously for rural hospitals.

B. Payment for Related Care Services

CRNAs furnish services to patients in addition to anesthesia services. In the proposed rule, we did not provide for separate fee schedule payments for these related care services. In the November 25, 1991 Physician Fee Schedule final rule (56 FR 59502), we have provided for separate payments for certain related care services to be implemented with the effective date of the final physician fee schedule regulations (see § 410.69(b)). These related care services include certain medical and surgical services not specifically included under the CPT–4 anesthesia coding system.

C. Time Unit Policy Revision

The final regulations to implement the uniform relative value guide (published August 7, 1990 (55 FR 32078)) provide for a revision to the time unit payment system for physician anesthesia services furnished on or after April 1, 1990. Section 6106 of Public Law 101–239 revised the method by which time units are counted for anesthesia services furnished by physicians or CRNAs. For services furnished before April 1, 1990, a fractional time unit was considered a full unit. For services furnished on or after April 1, 1990, section 6106 of Public Law 101–239 provides that a time unit is determined based on the actual time represented by the fractional time interval (see § 414.450(c)). For example, if an anesthesia procedure is personally performed by an anesthesiologist and the procedure lasts 66 minutes, we would recognize 66/15 time units, that is 4.4 time units.

D. Definition of Anesthetists (Section 410.69(b))

- We are allowing recent graduates of approved training programs who have not yet successfully completed the certification examination to be considered CRNAs for up to 24 months after graduation (rather than for 18 months after graduation as proposed), if consistent with State law.
- We are defining an anesthesiologist's assistant as a graduate of a medical school-based anesthesiologist's assistant educational program that is accredited by the Committee on Allied Health Education and Accreditation (CAHEA) and that includes approximately two years of specialized basic science and clinical education in anesthesia that builds on a premedical undergraduate science background.
- The anesthesiologist's assistant must work under the direction of an anesthesiologist. However, we are removing the requirement previously in the hospital conditions of participation that allowed an anesthesiologist's assistant to provide anesthesia only under the direct supervision of an anesthesiologist who is physically present.

E. ASC Facility Service

We are specifically including in § 416.61(b) the policy that the operating physician's supervision of the CRNA is covered only as an ASC facility service. We are also revising the conditions of participation for surgical services for ASCs to make the definition of anesthesiologist and related requirements consistent with the hospital conditions of participation.

F. Technical Changes

1. We are changing the title of subpart E—"Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians," to read "Criteria for Determinations of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians".

2. We have revised § 411.15(m) to clarify that services of all CRNAs and anesthesiologist's assistants, not merely those who are physician-employed, are excluded from the rebundling requirement imposed by that section. This change is being made to make the regulation consistent with section 1862(a)(14) of the Act, which does not differentiate among anesthetists based on their employment status.

3. In the final regulations, we have deleted the change made to § 405.502 and added a new paragraph (d) to § 405.501. This paragraph includes, as an exception to the reasonable charge provision, payments made to CRNAs and nurse anesthetists.

4. We have replaced the term "anesthesiologist assistant" with "anesthesiologist's assistant" to reflect current usage by health care professionals.

5. We have added § 414.450 to reflect the provisions dealing with time units for services furnished on or after April 1, 1990. We have incorporated the provisions of § 405.553(c) of the proposed rule in §§ 414.450 through 414.453 of the final rule, which is new subpart H, Payment for the Services of Anesthetists, in 42 CFR part 414, Payment for Part B Medical and Other Health Services.

6. We have amended the table of contents for part 410 by adding a new § 410.69, Services of a certified registered nurse anesthetist or an anesthesiologist's assistant: Basic rule and definitions. Section 410.66 of the proposed rule has been redesignated as § 410.69, and the definition of anesthesiologist's assistant in this section has been changed.

7. We have amended § 412.113(c) to incorporate the provisions of section 6132 of Public Law 101–239.

8. We have added a new 42 CFR part 414 subpart H, Payment for the Services of Anesthetists.

9. In § 489.20(d), we have added "services of an anesthetist as defined in § 410.69 of this chapter" as a category of services that the hospital does not have

to furnish directly or under arrangements to its inpatients. This corrects the earlier omission of these services and implements section 1866(a)(1)(H) of the Act.

VI. Methodology for Determining Final CRNA Fee Schedule Rates

We used the AANA's 1987 Annual Survey to establish the final CRNA fee schedule rates. We divided the State salaries reported by full-time and part-time CRNAs by the product of the total administered anesthetics and the national average base and time unit amount per case. For hospital-employed, medically-directed CRNAs, the national average base and time units per case were 11.6 units; for nonmedically-directed CRNAs, the national average base and time units per case were 10.9 units. In summary, we adjusted the 1987 salaries/incomes as follows:

- A factor of 32 percent of salary/income was used to account for fringe benefits and overhead.
- The adjusted salary/income was increased using a 1988 trend factor of 9.4 percent and a 1989 trend factor of 8.2 percent.
- An allowance was made for malpractice insurance based on the 1989 State-specific rates for malpractice insurance for CRNAs.
- No budget neutrality adjustment is necessary for the rural hospital exception.

We viewed the data separated for hospital-employed medically-directed CRNAs and all nonmedically-directed CRNAs. There were some States and the District of Columbia with low responses, which we define as fewer than ten responses. These States are listed as follows:

Low response: Medically-directed hospital employed CRNA areas	Low response: Non-medically directed CRNA areas
Alaska	Alaska.
Arizona	Connecticut.
Arkansas	Delaware.
District of Columbia	District of Columbia.
Idaho	Maine.
Indiana	Maryland.
Iowa	Massachusetts.
Montana	New Hampshire.
Nevada	New Jersey.
Oklahoma	Rhode Island.
Utah	Vermont.
Vermont	
Wyoming	

Only in two States and the District of Columbia was there a low response rate for both types of CRNA practitioners. In these areas, neither a medically-directed nor a nonmedically-directed rate could be computed. For the remaining areas, we could compute a rate for at least one type of practitioner. The other State level rate could then be derived by multiplying the State level rate computed based on reported data by a national statistic. This methodology is illustrated for Arizona and Connecticut. Arizona did not have a sufficient number of responses from hospital-employed medically-directed CRNAs. Connecticut did not have a sufficient number of responses from nonmedically-directed CRNAs.

Example 1: The nonmedically-directed rate for Arizona based on State level responses is $21.13. The relationship between the national mean nonmedically-directed rate and the national mean hospital-employed medically-directed rate is 1.69. The derived hospital-employed medically-directed rate is $12.50 ($21.13/1.69). The derived blended medically-directed rate for Arizona is $10.09.

$$(\$12.50 \times .58) + (\$6.77 \times .42) = \$10.09$$

In this example, the figure of $6.77 represents the conversion factor that would be paid for CRNA services if the CRNA is employed and medically directed by a physician. The figure of $6.77 is computed by multiplying the 1989 participating physician prevailing charge conversion factor by 101/30 and dividing by 12.1 units.

Example 2: The medically-directed rate for hospital-employed medically-directed CRNAs for Connecticut based on State responses is $10.19. The derived nonmedically-directed rate for Connecticut is $17.22 ($10.19 × 1.69).

Alaska, the District of Columbia, and Vermont had a low response rate for each type of practitioner. We decided to establish a conversion factor for each of these by using the regional rate. The regions are based on the regional designations used in the hospital prospective payment system.

To ensure budget neutrality, we are, as described in the proposed rule, calculating a blended medically-directed rate. The blended rate is composed of the hospital-employed medically-directed rate that is assigned a weight of 58 percent and the physician-employed medically-directed that is assigned a weight of 42 percent. The methodology to calculate the physician-employed medically-directed rate remains unchanged from the proposed rate. The physician-employed medically-directed rate is calculated as follows:

(CF × 101/30) divided by (12.1)

CF = State-specific participating physician prevailing charge conversion factor. In cases in which the State is not a single locality, a State-specific participating physician prevailing charge conversion factor was computed by weighing the locality participating physician prevailing charge conversion factor by the weight of locality-allowed anesthesia charges.

As noted in the proposed regulations, the average anesthesia procedure involving a physician-employed medically-directed CRNA lasts 101 minutes and has an average unit value of 12.1 units. Prior to 1989, the payment methodology provided that two time units an hour approximated Part B payment for the physician-employed medically-directed CRNA.

Since there were two different participating physician prevailing charge conversion factors in effect during 1989, there are two different State level medically-directed CRNA rates in 1989. One rate applies to CRNA services furnished on or after January 1, 1989 but before March 1, 1989. The other rate applies to medically-directed CRNA services furnished on or after March 1, 1989, but before January 1, 1990.

Since the blending process is not used to calculate the nonmedically-directed rate, there is only one nonmedically-directed rate applicable during 1989.

We have illustrated below the calculation of both the medically-directed and nonmedically-directed rates for Alabama for 1989 (See Tables 1 and 2). The medically-directed rate is calculated for services furnished on or after March 1, 1989.

Tables 1 and 2 each include an example for Alabama that explains the computation of the final March 1, 1989 blended medically-directed rate and the final 1989 nonmedically-directed rate for CRNA services. Table 3, column 1 provides the State-specific medically-directed rates effective for services furnished on or after January 1, 1989 and prior to March 1, 1989. Table 3, column 2 provides the State-specific medically-directed rates effective for services furnished on or after March 1, 1989. Table 3, column 3 provides the State-specific nonmedically-directed rates effective for services furnished in 1989. The carriers will determine adjustments based on the differences between the final rates and the proposed rates published in the January 26, 1989 proposed rule.

In general, the final medically-directed CRNA rates have increased on average by 7 percent from the proposed rates; the nonmedically directed CRNA rates have increased on average by 30

percent from the proposed rates. The fact that these rates have increased does not mean these rates are not budget neutral as required by law. The differences between the final and proposed rates are due to more current and reliable data on CRNA salaries/incomes and caseloads.

Table 1

Hospital Employed Medically-Directed Rate	
Total salaries based on 100 responses from full-time or part-time medically directed CRNAs in Alabama	$5,116,448
Total anesthetics administered by the 100 respondents in Alabama	59,583
Average salary cost per case	$85.87
Average number of base and time units per case involving CRNAs (units/care)	11.6
1987 conversion factor ($85.87/11.6)	$7.40
Adjustments for fringe benefits and overhead (7.40×1.32)	$9.77
Update adjustment ($9.77×1.18)	$11.53
Malpractice rate adjustment (Alabama)	$.77
1989 Hospital employed medically directed CRNA rate	$12.30
Physician Employed Medically-Directed Rate	
Average time per medically-directed case (minutes)	101
Average time and base units per Medicare case (units)	12.1
1989 weighted average prevailing charge conversion factor for participating anesthesiologists in Alabama	$16.10
March 1 conversion factor for medically-directed physician employed CRNAs ($16.10×101/30)/12.1)	$4.48
Blended Medically-Directed CRNA Rate	
National hospital-employed CRNA percentage (percent)	58
National physician-employed CRNA percentage (percent)	42
Hospital-employed medically-directed CRNA rate for Alabama	$12.30
Physician-employed medically-directed CRNA rate for Alabama	$4.48
Blended rate for Alabama (.58×$12.30)+(.42×$4.48)	$9.02

Table 2

Nonmedically-Directed CRNA Rate	
Total salaries/incomes based on 37 responses from full-time or parttime nonmedically-directed CRNAs in Alabama	$2,531,624
Total anesthetics administered by the 37 respondents in Alabama	21,067

Table 2—Continued

Average salary cost per case	$120.06
1987 conversion factor ($120.06/10.9)	$11.01
Adjustments for fringe benefits and overhead ($11.01×1.32)	$14.54
Update adjustment ($14.54×1.18)	$17.16
Malpractice adjustment (Alabama)	$.86
1989 nonmedically-directed rate for Alabama	$18.02

TABLE 3

State	Jan. 1, 1989 [1]	Mar. 1, 1989 [1]	1989 [2]
Alabama	8.64	9.02	18.02
Alaska	9.51	9.58	19.94
Arizona	9.45	10.09	21.13
Arkansas	7.67	7.93	17.40
California	9.92	9.97	21.00
Colorado	7.43	7.70	18.81
Connecticut	8.05	8.05	17.22
Delaware	7.56	7.61	16.90
DC	8.27	8.33	15.43
Florida	9.61	9.70	16.25
Georgia	9.15	9.24	16.34
Hawaii	10.40	10.76	16.80
Idaho	9.43	9.45	22.10
Illinois	9.18	9.22	15.87
Indiana	6.87	7.27	14.83
Iowa	8.25	8.65	16.51
Kansas	9.48	9.61	18.88
Kentucky	8.84	8.93	14.20
Louisiana	6.60	9.01	16.69
Maine	6.93	7.03	15.24
Maryland	7.12	7.16	14.31
Massachusetts	7.79	7.78	16.71
Michigan	8.15	9.48	16.80
Minnesota	7.72	7.81	17.07
Mississippi	[3]	8.24	16.40
Missouri	9.08	9.53	18.62
Montana	9.02	9.53	19.01
Nebraska	8.60	8.59	16.50
Nevada	11.39	12.27	24.53
New Hampshire	7.76	7.76	18.05
New Jersey	8.35	8.37	17.25
New Mexico	8.17	8.55	23.43
New York	9.37	9.49	14.46
North Carolina	7.80	7.67	13.84
North Dakota	8.27	8.27	21.07
Ohio	9.51	9.74	17.24
Oklahoma	7.72	8.13	17.79
Oregon	6.51	6.55	18.21
Pennsylvania	7.25	7.32	10.51
Rhode Island	7.15	7.11	16.12
South Carolina	8.04	8.06	14.67
South Dakota	9.22	9.66	18.64
Tennessee	8.36	8.62	18.35
Texas	9.06	9.29	21.19
Utah	9.62	9.99	21.17
Virginia	6.95	7.22	16.86
Vermont	7.76	7.76	16.78
Washington	8.91	8.93	19.18
West Virginia	7.08	7.30	14.89
Wisconsin	8.72	8.87	16.86
Wyoming	10.95	11.17	26.56

[1] Medically directed rate.
[2] Nonmedically directed rate.
[3] To be computed by carrier.

VII. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under this final rule, aggregate payments plus coinsurance to hospitals, physicians, ASCs, and CRNAs for CRNA services are budget neutral with respect to previous program payments. However, this rule contains a provision that eliminates payment for medical direction services furnished by surgeons. This is an administrative initiative and was not part of the CRNA fee schedule legislation. This initiative provides benefit savings of $20 million for FY 1991, and $25 million for each of FYs 1992, 1993, 1994, and 1995.

Based on this projection, and the reasons discussed above, we do not expect any economic impact to result from this rule that will meet any of the E.O. 12291 criteria. We have, therefore, not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider individuals or States to be small entities. We do consider hospitals, physicians, ambulatory surgical centers, and CRNAs (all of which could be affected by this final rule) to be small entities. Because of the large number of small entities that could potentially be affected and the significance of these provisions on hospitals, physicians and CRNAs, we are preparing a regulatory flexibility analysis for this rule.

1. Impact on Hospitals

We expect that hospitals that employ CRNAs whose services are medically-directed by anesthesiologists will experience an average 21 percent reduction in payments for CRNA services than would have been made but for this rule. This reduction is due to blending of the rates for medically-directed CRNAs employed by hospitals and rates for medically-directed CRNAs employed by physicians. The rates for hospital-employed CRNAs were generally higher; therefore the blending of the two rates will result in a reduced rate for the hospitals.

Some hospitals may continue to bill for services of CRNAs and experience this loss. Other hospitals may transfer the risk in payment reductions associated with the CRNA fee schedule to CRNAs by reducing CRNA salaries. Still other hospitals may stop employing CRNAs, which will allow the CRNAs to bill directly. We anticipate that the amount by which a hospital is able to reduce its payment to CRNAs for services, the hospital's Medicare patient volume, and the degree to which the hospital wishes to exercise control over CRNAs will be among the factors that will determine whether hospitals continue to employ CRNAs and bill for CRNA services.

Approximately 500, or 25 percent of rural hospitals claiming costs for CRNA services, qualified for reasonable cost payments in calendar year 1989. Section 6132 of Public Law 101–239 amended section 9320(k) of Public Law 99–509 to raise the yearly threshold from 250 to 500 for the number of surgical procedures requiring anesthesia that would be performed in a rural hospital before the hospital would have to give up payment on a reasonable cost basis for CRNA services. This provision is effective for anesthesia services furnished on or after January 1, 1989. We estimate that approximately 1,000 rural hospitals will now qualify for reasonable cost payments under this provision in calendar year 1990, resulting in payments to more rural hospitals for CRNA services.

2. Impact on Physicians

a. *Anesthesiologists.* Because of the way the blended medically-directed CRNA rate has been computed in this final rule, the Medicare program will pay higher amounts for physician-employed medically-directed CRNAs than was previously paid for these services on a reasonable charge basis. This increase in payment is a result of the physician-employed charges being blended with costs for hospital employed CRNAs.

In addition, in this final rule, we recognize medical direction only if an anesthesiologist medically directs concurrent anesthesia procedures. If an anesthesiologist and a CRNA are involved in a single anesthesia procedure, we consider the service to be performed by the anesthesiologist. We will recognize payment for the CRNA service only if documentation is submitted showing it is medically necessary for both individuals to be personally involved in the performance of the anesthesia procedure. If documentation is furnished and the carrier determines that the CRNA service is medically necessary, the carrier pays the physician anesthesia service at the personally performed physician payment rate and the CRNA service at the medically directed rate.

b. *Surgeons.* In the proposed rule, as well as this final rule, we provided for the elimination of medical direction payments for surgeons who perform surgery and also supervise the services of a CRNA. We believe the payment of a separate charge for medical-directed anesthesia services is not currently a widespread practice. This final rule will bring national consistency to the policy of denying such claims. We estimate the benefit savings associated with this policy to be $20 million for each of FYs 1992, 1993, 1994, and 1995. Effective on or after January 1, 1989, however, to the extent a surgeon employs or contracts with a CRNA, the surgeon is entitled to receive the CRNA fee schedule payment for services the CRNA furnishes.

3. Impact on CRNAs

The potential effects of the 21 percent reduction on the hospital-employed CRNAs is discussed in section B.1. of this impact statement.

The revisions to the time unit policy, required by section 6106 of Public Law 101–239, are effective for anesthesiologist services furnished on or after April 1, 1990. Since § 414.450(c)(2) requires that services of anesthetists be paid on a basis similar to that used for anesthesiologists, for CRNA services furnished on or after April 1, 1990, we recognize only the actual time of the fractional time interval. Before April 1, 1990, a fractional time unit was considered a full unit. (This time unit policy revision is explained in section V.D. of the preamble.) Since the payment for fractional time units is a small part of total payments, we believe there will be a minimal reduction in payment amounts as a result of not rounding the time interval upward.

4. Impact on ASCs

Prior to January 1, 1989, services furnished by CRNAs employed by ASCs were paid as part of the ASC facility rate. As required by section 9320 of Public Law 99–509, as amended by section 4084 of Public Law 100–203, this final rule allows an ASC to be paid under the CRNA fee schedule for CRNAs that are employed by or under contract to the ASC. The allowance of a separate payment for CRNA services may encourage more ASCs to employ or contract with CRNAs.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The provisions of this final rule will benefit some rural hospitals, including small rural hospitals, by allowing more rural hospitals to continue to employ CRNAs and be paid on a reasonable cost related basis if the hospital meets other requirements and selects this option. This final rule reflects current policy and procedures and serves to codify in regulations sections of Public Law 101–239 that have already been implemented by instructions. Therefore, we are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VIII. Other Required Information

Paperwork Reduction Act

This final rule contains no information collection requirements; therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Fee Schedules for Services of Certified Registered Nurse Anesthetists.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. The authority citation for subpart D continues to read as follows:

Authority: Secs. 1102, 1871 and 1887, of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395xx).

B. In § 405.480, the introductory text in paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 405.480 Payment for services of physicians to providers: General rules.

(a) *Allowable Costs.* Except as specified otherwise in § 413.102 of this chapter, § 405.465, or § 405.466, costs a provider incurs for services of physicians are allowable only if the following conditions are met:

* * * * *

(2) The services include a surgeon's supervision of services of a qualified anesthetist, but do not include physician availability services, except for reasonable availability services furnished for emergency rooms;

* * * * *

C. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842(b) and (h), 1848, 1861(b), (v), and (aa), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395m(b), 1395u(b) and (h), [1395w-4, 1395x(b), (v), and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

D. The heading of subpart E is revised to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians

E. In § 405.501, paragraph (a) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 405.501 Determination of reasonable charges.

(a) Except as specified in paragraphs (b), (c), and (d) of this section, Medicare pays no more for Part B medical and other health services than the "reasonable charge" for such service. The reasonable charge is determined by the carriers (subject to any deductible and coinsurance amounts as specified in §§ 410.152 and 410.160 of this chapter).

* * * * *

(d) For services furnished on or after January 1, 1989 and before January 1, 1991, by a certified registered nurse anesthetist or an anesthesiologist's assistant, payment is made after the Part B deductible is met based on 80 percent of the least of the—

(1) Actual charge;

(2) Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or

(3) Fee schedule amount, as described in §§ 414.451 and 414.452.

* * * * *

II. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s) and (cc), 1861(aa), 1871 and 1881 of the 7, Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395n, 1395x(r), (s) and (cc), 1395x(aa) 1395hh, and 1395rr).

B. In § 410.10, the introductory text is republished, and a new paragraph (t) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(t) Services of a certified registered nurse anesthetist or an anesthesiologist's assistant.

* * * * *

C. In § 410.12, the introductory text of paragraph (a) and paragraph (a)(2) are revised to read as follows:

§ 410.12 Medical and other health services: Basic conditions and limitations.

(a) *Basic conditions.* The medical and other health services specified in § 410.10 are covered by Medicare Part B only if they are not excluded under subpart A of part 411 of this chapter, and if they meet the following conditions:

* * * * *

(2) *By whom the services must be furnished.* The services must be furnished by a facility or other entity as specified in §§ 410.14 through 410.69.

* * * * *

D. A new § 410.69 is added to read as follows:

§ 410.69 Services of a certified registered nurse anesthetist or an anesthesiologist's assistant: Basic rule and definitions.

(a) *Basic rule.* Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist's assistant who is legally authorized to perform the services by the State in which the services are furnished.

(b) *Definitions.* For purposes of this part—

Anesthesiologist's assistant means a person who—

(1) Works under the direction of an anesthesiologist;

(2) Is in compliance with all applicable requirements of State law, including any licensure requirements the State imposes on nonphysician anesthetists; and

(3) Is a graduate of a medical school-based anesthesiologist's assistant educational program that—

(A) Is accredited by the Committee on Allied Health Education and Accreditation; and

(B) Includes approximately two years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

Anesthetist includes both an anesthesiologist's assistant and a certified registered nurse anesthetist.

Certified registered nurse anesthetist means a registered nurse who:

(1) Is licensed as a registered professional nurse by the State in which the nurse practices;

(2) Meets any licensure requirements the State imposes with respect to non-physician anesthetists;

(3) Has graduated from a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Programs, or such other accreditation organization as may be designated by the Secretary; and

(4) Meets the following criteria:

(i) Has passed a certification examination of the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or any other certification organization that may be designated by the Secretary; or

(ii) Is a graduate of a program described in paragraph (3) of this definition and within 24 months after that graduation meets the requirements of paragraph (4)(i) of this definition.

III. Part 411 is amended as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

B. In § 411.15, the introductory text and paragraph (m)(1) are republished and paragraph (m)(2) is revised to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(m) Services to hospital inpatients—

(1) *Basic rule.* Except as provided in paragraph (m)(2) of this section, any service furnished to an inpatient of a hospital by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's inpatients.

(2) *Exception.* Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis, and services of an anesthetist as defined in § 410.69 of this chapter are not excluded.

IV. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. In § 412.1, paragraph (a) is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists' services, as described in § 412.113(c)) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

C. In § 412.2, the introductory text of paragraph (d) is republished and paragraph (d)(5) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

* * * * *

(5) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

D. In § 412.71, the introductory text of paragraph (b) is republished and paragraph (b)(8) is revised to read as follows:

§ 412.71 Determination of base year costs.

* * * * *

(b) *Modifications to base-year costs.* Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base-year inpatient operating costs, as necessary, to include malpractice insurance costs as described in § 413.55 of this chapter, and exclude the following:

* * * * *

(8) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

E. In § 412.113, paragraph (c) is revised to read as follows:

§ 412.113 Other payments.

* * * * *

(c) *Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements.* (1) For cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989, payment is determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiologist's assistants) employed by the hospital or obtained under arrangements.

(2)(i) For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989, through any part of a cost reporting period occurring before January 1, 1990, payment is determined on a reasonable cost basis for anesthesia services provided in a hospital by qualified nonphysician anesthetists employed by the hospital or obtained under arrangement, if the hospital demonstrates to its intermediary prior to April 1, 1989 that it meets the following criteria:

(A) The hospital is located in a rural area as defined in § 412.62(f) and is not deemed to be located in an urban area under the provisions of § 412.64(b)(3).

(B) The hospital must have employed or contracted with a qualified nonphysician anesthetist, as defined in § 410.66 of this chapter, as of January 1, 1988 to perform anesthesia services in that hospital. The hospital may employ or contract with more than one anesthetist; however, the total number of hours of service furnished by the anesthetists may not exceed 2,080 hours per year.

(C) The hospital must provide data for its entire patient population to demonstrate that, during calendar year 1987, its volume of surgical procedures

(inpatient and outpatient) requiring anesthesia services did not exceed 250 procedures. For purposes of this section, a "surgical procedure requiring anesthesia services" means a surgical procedure in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

(D) Each qualified nonphysician anesthetist employed by or under contract with the hospital has agreed in writing not to bill on a reasonable charge basis for his or her patient care in that hospital.

(ii) To maintain its eligibility for reasonable cost payment under paragraph (c)(2)(i) of this section in calendar years after 1989, a qualified hospital must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 500 procedures.

(iii) A hospital that did not qualify for reasonable cost payment for nonphysician anesthetist services furnished in calendar year 1989 can qualify for reasonable cost payment in subsequent calendar years, if it meets the criteria in § 412.113(c)(2)(i) (A), (B) and (D) above, and demonstrates to its intermediary prior to the start of the calendar year that it met these criteria. The hospital must provide data for its entire patient population to demonstrate that, during calendar year 1987 and the year immediately preceding its election of reasonable cost payment, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 500 procedures.

(iv) For administrative purposes for the calendar years after 1990, the volume of surgical procedures for the immediately preceding year is the sum of the surgical procedures for the nine month period ending September 30, annualized for the twelve month period.

* * * * *

V. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 100–234 (42 U.S.C. 1395ww (note)).

B. In § 413.1, paragraph (b) is amended by changing the reference in the first sentence from "paragraphs (c) through (e)" to "paragraphs (c) through (f)" and by adding a new paragraph (f) to read as follows:

§ 413.1 Introduction.

* * * * *

(f) *Services of qualified nonphysician anesthetists.* For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989, costs incurred for the services of qualified nonphysician anesthetists are not paid on a reasonable cost basis unless the provisions of § 412.113(c)(2) of this chapter apply. These services are paid under the special rules set forth in § 405.553 of this chapter.

C. In § 413.80, paragraph (a) is revised and a new paragraph (h) is added to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

(a) *Principle.* Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost; however, except for anesthetists' services described under paragraph (h) of this section, bad debts attributable to the deductibles and coinsurance amounts are reimbursable under the program.

* * * * *

(h) *Exception.* Bad debts arising from services for anesthetists paid under a fee schedule, as described in § 414.450 of this chapter, are not reimbursable under the program.

VI. Part 414 is amended to read as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1834(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395m(a), 1395hh, and 1395rr).

2. A new subpart H, consisting of §§ 414.450 through 414.453 is added to read as follows:

Subpart H—Payment for the Services of Anesthetists

Sec.

Subpart H—Payment for the Services of Anesthetists

§ 414.450 Payment for Anesthetist Services.

(a) *Purpose.* This subpart implements section 1833(l) of the Act by specifying how payment is determined for the services of anesthetists furnished on or after January 1, 1989 and before January 1, 1991.

(b) *General rules.* For services furnished on or after January 1, 1989 and before January 1, 1991, the amount of payment for anesthetist services after the Part B deductible has been met is determined to be 80 percent of the least of the—

(1) Actual charge;

(2) Prevailing charge that would be recognized if the service had been performed by an anesthesiologist; or

(3) Fee schedule amount, which is the product of the applicable conversion factor, as described in paragraphs (b) through (d) of § 414.451, and the sum of the base and time units per case.

(c) *Medical direction and medical supervision.* If the physician medically directs two, three, or four anesthesia procedures involving anesthetists or medically supervises more than four concurrent anesthesia procedures involving anesthetists, the services of those anesthetists may be paid under the fee schedule. If a physician medically supervises more than four concurrent procedures involving anesthetists, the medically-directed conversion factor is used to determine payment.

(d) *Involvement of an anesthesiologist and an anesthetist in a single procedure.* If an anesthesiologist and an anesthetist are involved in a single procedure, the procedure is deemed to be furnished by the anesthesiologist. Payment may be made for the anesthetist service only if documentation is submitted to and approved by the carrier showing it is medically necessary for the anesthetist to be involved in the procedure.

(e) *Time intervals.* (1) For anesthesia services furnished by an anesthetist on or after January 1, 1989 and before April 1, 1990, no more than one time unit for each 15 minute interval or fraction thereof is recognized.

(2) For anesthesia services furnished by an anesthetist on or after April 1, 1990, the actual time associated with a fractional time interval is recognized.

§ 414.451 Basic methodology for calculating anesthetist fee schedules.

(a) *Fee schedules.* HCFA establishes separate State-level fee schedules for—

(1) Anesthetists whose services are medically-directed; and

(2) Anesthetists whose services are not medically-directed.

(b) *Calculation of conversion factors for anesthetists who are medically directed.*—(1) *Hospital-employed anesthetists.* State-specific conversion factors for medically-directed hospital-employed anesthetists are computed from the 1987 American Association of Nurse Anesthetists annual membership survey, as follows:

(i) An average cost per case is computed by dividing the total reported State salaries of full and part-time medically-directed hospital-employed anesthetists by the total reported anesthetics administered by the anesthetists.

(ii) A base conversion factor is computed by dividing the average cost per case by the estimated national average of base and time units for an anesthesia case involving a hospital-employed medically-directed anesthetist.

(iii) The conversion factor is adjusted to reflect an allowance that approximates fringe benefits and allowable hospital overhead associated with anesthetists' services.

(iv) The 1987 conversion factor is updated by an inflation factor through 1989.

(v) The conversion factor is increased to include a State specific amount for malpractice expense. The resultant amounts are considered to be State-specific conversion factors for medically-directed hospital-employed anesthetists.

(2) *Physician-employed anesthetists.* State-specific conversion factors for medically-directed physician-employed anesthetists are computed as follows:

(i) The 1989 Statewide locality prevailing charge conversion factor for anesthesia services of participating physicians, as adjusted by the MEI, is multiplied by the average time per anesthesia case involving a medically directed physician-employed anesthetist, and divided by 30 minutes. (If there are multiple localities within a State, or more than one carrier serves a State, a single, Statewide weighted average participating physician prevailing charge is applied.)

(ii) The resulting amount is divided by the average number of base and time units per anesthesia case involving a physician who medically directs and employs the CRNA.

(3) *Calculation of medically-directed conversion factors.* The applicable State-specific conversion factors for anesthetists who are medically directed are based on a blend of 58 percent of the hospital-employed conversion factor and 42 percent of the physician-employed conversion factor calculated under paragraphs (b)(1) and (b)(2) of this section, respectively.

(c) *Calculation of conversion factors for anesthetists who are not medically directed.* The State-specific conversion factors for anesthetists who are not medically directed are computed under the procedures in paragraph (b)(1) of this section except that:

(1) The total reported State salaries of full and part-time nonmedically-directed anesthetists and the total reported anesthetics administered by these anesthetists are used to compute an average cost per case; and

(2) A base conversion factor is computed by dividing the average cost per case by the estimated national average number of base and time units for an anesthesia case involving a nonmedically-directed anesthetist.

(d) *Exceptions.*—(1) *Insufficient State-level data for one conversion factor.* If only one of the State-level conversion factors can be calculated, the other conversion factor is calculated based on that factor and on national statistics.

(2) *Insufficient State-level data for both medically-directed and nonmedically-directed conversion factors.* If neither the State-level medically-directed nor nonmedically-directed conversion factors can be calculated from State-specific data, regional data are used to calculate both conversion factors.

§ 414.452 Updating and adjusting the anesthetist fee schedule.

(a) *General rules for updating the fee schedule conversion factors.* (1) Except as provided in paragraph (a)(2) of this section, for services furnished in calendar years after 1989, the fee schedule conversion factors applicable to each year are the previous year's conversion factors updated by the percentage increase in the Medicare Economic Index for that year.

(2) The fee schedule conversion factors for anesthetist services furnished in calendar year 1990 are the fee schedule conversion factors that were applicable to anesthetists' services furnished on December 31, 1989.

(b) *Adjusting the fee schedules.* The fee schedules may be adjusted for services furnished on or after January 1, 1990 to reflect data that are more accurate than the data used to construct the initial fee schedules.

§ 414.453 Recipients of fee schedule payments.

Fee schedule payments are made to the anesthetist who furnishes the service, or to a hospital, physician, group practice or ambulatory surgical center with which the anesthetist has an employment or contractual arrangement that provides for these payments to be made.

VII. Part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

A. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z, and 1395aa).

B. Section 416.42 is amended by revising paragraph (b) to read as follows:

§ 416.42 Condition for coverage—surgical services.

* * * * *

(b) *Standard: Administration of anesthesia.* Anesthetics must be administered by only—

(1) A qualified anesthesiologist; or

(2) A physician qualified to administer anesthesia, a certified registered nurse anesthetist or an anesthesiologist's assistant as defined in § 410.68(b) of this chapter, or a supervised trainee in an approved educational program. In those cases in which a non-physician administers the anesthesia, the anesthetist must be under the supervision of the operating physician, and in the case of an anesthesiologist's assistant, under the supervision of an anesthesiologist.

* * * * *

C. In § 416.61, a new paragraph (a)(8) is added and paragraph (b) is amended by adding a new sentence to the end.

§ 416.61 Scope of facility services.

(a) * * *

(8) Supervision of the services of an anesthetist by the operating surgeon.

(b) * * * In addition, they do not include anesthetist services furnished on or after January 1, 1989.

VIII. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

A. The authority citation for part 482 is revised to read as follows:

Authority: Secs. 1102, 1136, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a)

of the Social Security Act (42 U.S.C. 1302, 1320b–6, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

B. In § 482.52, the introductory text of paragraph (a) is republished and paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

* * * * *

(a) Standard: Organization and staffing. The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered by only—

* * * * *

(4) A certified registered nurse anesthetist

(CRNA), as defined in § 410.69(b) of this chapter, who is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter, who is under the supervision of an anesthesiologist who is immediately available if needed.

* * * * *

IX. Part 489 is amended as follows:

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

A. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

B. In § 489.20, the introductory text is republished and paragraph (d) is revised to read as follows:

§ 489.20 Basic commitments.

The provider agrees—

* * * * *

(d) In the case of a hospital that furnishes inpatient hospital services to a beneficiary, to either furnish directly or make arrangements for all items and services (other than physicians' services as described in § 405.550(b) of this chapter and services of an anesthetist, as defined in § 410.69 of this chapter) for which the beneficiary is entitled to have payment made under Medicare; and

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 93.773, Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: March 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 24, 1991.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received by the Office of the Federal Register on July 14, 1992.

[FR Doc. 92–16943 Filed 7–30–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 920526–2126]

Marine Mammals; Fur Seal Act Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This rule eliminates the option, currently available in the Fur Seal Act regulations, for the Secretary to extend the subsistence harvest of fur seals on the Pribilof Islands beyond August 8 each year. The option is being eliminated to provide protection for female fur seals, which begin arriving on the beaches of the Pribilof Islands after the first week in August. This rule also changes the earliest possible start date of the subsistence harvest from June 30 to June 23. This change is made at the request of the Pribilof Aleuts to provide an additional week of potential harvesting in the face of the removal of the extension option.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 at 301–713–2332.

SUPPLEMENTARY INFORMATION: The northern fur seal (*Callorhinus ursinus*) population is considered depleted under the Marine Mammal Protection Act (MMPA) (51 FR 47156, December 30, 1986). The subsistence harvest of northern fur seals on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the MMPA, 16 U.S.C. 1316 *et seq.* (at 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Islands communities of St. Paul and St. George using humane harvesting methods. The subsistence harvest has been regulated to minimize negative effects on the population by limiting the harvest to a 40-day harvest season (June 30–August 8) and limiting the age and sex of seals to be harvested to sub-adult males. The August 8 deadline was chosen to avoid an unacceptable taking of female fur seals. In early August, immature female seals begin arriving at the rookeries in large numbers and the immature females and males, which are not easily distinguished, become intermixed.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator, is required to terminate the harvest when it is determined that the subsistence demands of the Pribilof Aleuts have been met, or on August 8 of each year, whichever comes first. However, the regulations also establish criteria for extending the harvest period if the subsistence needs of the Pribilof Aleuts have not been met. Section 215.32(f)(2) authorized the Assistant Administrator to extend the harvest period until September 30 if, by August 8, the subsistence needs of the Pribilof Aleuts were not fulfilled, and the number of female seals taken during the harvest is low. With regard to the latter requirement, two standards of unacceptable levels of female take trigger termination of any harvest extension:

(1) If the total number of female seals taken during the harvest exceeds one half of one percent of the total number of seals taken; and

(2) If, during the extension period, five female seals are taken within 7 consecutive days.

Background

Between 1985 and 1991, extensions to the harvest season were requested and granted in 1986 and 1987. Extension of the harvest beyond the first week of August has resulted in an increase in the number of female seals taken. The harvest was suspended following the first day of the extension each time an extension was granted because of the unacceptable number of female seals taken. In response to the level of females taken during each of the extended harvest periods, NMFS announced its intent to amend 50 CFR 215.32(f) to eliminate the extension option for 1989 and subsequent years (53 FR 28887, August 1, 1988), although no further action was taken by NMFS at that time.

Following the August 1, 1988, notice by NMFS, the Aleut Community of St. Paul Island requested a change in the Fur Seal Act regulations to allow the subsistence harvest to begin June 23, 1 week earlier than the June 30 start date dictated by 50 CFR 215.32(c)(1). They cited a desire for seal meat by community members before June 30, a lack of meat remaining from the previous year's take, and the possible inability to harvest their quota of seals in the absence of the harvest extension option.

On June 3, 1991, NMFS published a proposed rule to eliminate the extension option and to begin the harvest 1 week earlier (on June 23 instead of June 30) (56 FR 25066). Because only sub-adult males dominate the harvest areas at that time, and all other mandatory controls upon the harvest still apply, no adverse impact on the seal population as a result of starting the harvest 1 week earlier is anticipated by NMFS. Because of the apparent inability of harvesters to distinguish subadult males from females despite best efforts, and because of the increased probability and demonstrated risk of taking females after August 8, NMFS proposed to eliminate the harvest extension option (50 CFR 215.32(f)(2)) of the Assistant Administrator (56 FR 25066, June 3, 1991).

This final rule adopts all changes proposed on June 3, 1991 (at 56 FR 25066).

Response to Comments

Comments on the proposed rule were to be postmarked on or before July 18, 1991. NMFS received one set of comments on this proposed rulemaking. That commenter agreed with NMFS proposal to eliminate the harvest extension option, but disagreed with NMFS suggestion of allowing the harvest to begin 1 week earlier. The commenter pointed to NMFS' own statements in the **Federal Register** notice announcing the emergency final rule to regulate the subsistence fur seal harvest to support its argument against an earlier start date.

In the July 9, 1986, **Federal Register** notice, NMFS explained its decision to open the harvest no earlier than June 30 by stating that an earlier start date would: (1) Focus harvesting on the wrong age group, (2) disrupt research data collection, and (3) be more costly to monitor (51 FR 24836). At that time, NMFS also observed that very few harvestable seals are present in the haul-out areas prior to the end of June; therefore, an earlier start date would not significantly increase the availability of seal meat.

The commenter felt that the reasons now advanced by NMFS to justify the earlier start date (the Pribilof Aleuts desire for seal meat before June 30, the inability to harvest the number of seals needed during the limited season, and the lack of meat left from the previous years harvest) were inadequate. In response to NMFS reasoning, the commenter responded that the record reflects that the fur seal harvest frequently does not begin until the 2nd week of July, and, pointing to the 1991 harvest as an example, the restricted time frame of the harvest has not been an obstacle to obtaining enough seals.

NMFS acknowledges both of these comments. Although the harvest has not started until well into July on some occasions, it must be understood that the subsistence harvest on the Pribilofs is conducted entirely by experienced volunteers. Because of this, it can be difficult to coordinate harvest personnel, equipment and weather conditions precisely on June 30 every year. On several occasions the start of the seal harvest season has coincided with halibut season and various construction projects, both of which otherwise employed many of the experienced sealers, making them unavailable for certain periods of time. Establishing the start date for the seal harvest 1 week earlier would merely make additional time available to conduct the harvest, it would of course not guarantee that all other factors would cooperate to allow the harvest to actually begin on June 23.

It is true that an earlier harvest start date would generally allow the taking of older animals, but the seals present in the haul-out areas by mid-June (3-and 4-year-old males) are still within the harvestable category of sub-adult males. And, although it is also true that an earlier start date will not significantly increase the availability of seal meat to the Pribilovians, even the small amounts that could be obtained would provide an important source of fresh meat, especially since by June there is generally little meat left from the previous year's harvest.

In the July 9, 1986, notice (51 FR 24828), NMFS did state that beginning the harvest before June 30 would increase the costs of monitoring, especially given the potential for harvest extensions requiring NMFS personnel to be present on the island for longer periods of time and perhaps having to make return trips to the islands to accommodate the additional harvesting. However, with the removal of the harvest extension option, NMFS believes the costs should approximately balance.

NMFS also established the June 30 start date in 1986 after considering the effect earlier harvesting would have on some continuing harvest research data collection taking place on the islands. However, the data now collected from the harvested animals is different from that collected during the commercial harvest and, as a result, this is no longer a valid concern.

Classification

For reasons discussed in previous environmental impact statements (EIS), it is hereby determined that the approval and implementation of this rule will not significantly affect the human environment, and that preparation of an EIS on this action is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations.

The Under Secretary for Oceans and Atmosphere has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only impact will be on individual native Alaskan residents of the Pribilof Islands in the form of a revised schedule for the annual fur seal harvest. Therefore, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR part 215 is amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for 50 CFR part 215 continues to read as follows:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.32 is amended by removing paragraph (f)(2) and redesignating paragraph (f)(1) as paragraph (f), and by revising paragraph (c)(1) to read as follows:

§ 215.32 Restrictions on taking.

* * * * *

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

* * * * *

Dated: July 24, 1992.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 92–18063 Filed 7–30–92; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of sablefish for vessels using hook-and-line gear in the West Yakutat District of the Gulf of Alaska (GOA) and is requiring that catches of sablefish be treated in the same manner as prohibited species and discarded. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in the West Yakutat District has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 27, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat District was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 3,553 metric tons.

The Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat District has been reached. Therefore, NMFS, in accordance with § 672.24(c)(3)(ii), is requiring that further catches of sablefish must be treated as a prohibited species by persons using that type of gear, effective from 12 noon, Alaska local time (A.l.t.), July 27, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18052 Filed 7–27–92; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Parts 672 and 675

[Docket No. 920402–2102]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule prohibiting federally permitted U.S. vessels from fishing in the international waters of the Central Bering Sea in an area called the "Donut Hole" and from retaining on board fish harvested from the Donut Hole as long as that vessel is in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). This rulemaking is necessary to reduce the further exploitation of the Aleutian Basin pollock stock (*Theragra chalcogramma*), which is found in both the Donut Hole and in the EEZ. The rulemaking will:

(1) Promote the goals and objectives of the North Pacific pollock stocks off Alaska; and

(2) Further U.S. efforts regarding the negotiations with Japan, Poland, China, Korea, and the Russian Republic to establish an international conservation regime on the living resources of the Central Bering Sea.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802, telephone 907–586–7221.

SUPPLEMENTARY INFORMATION: The domestic and foreign ground fish fisheries in the EEZ of the GOA and the BSAI are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plans (FMPs) for Groundfish of the GOA and the BSAI. These FMPs were prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. *et seq.*) and are implemented by regulations at 50 CFR parts 611, 620, 672 and 675.

Two measures are implemented by this final rule. First, §§ 672.4 and 675.4, which govern the issuance of Federal fishing permits, are amended by prohibiting fishing in the Donut Hole by a federally permitted fishing vessel. Second, §§ 672.7 and 675.7, which govern general prohibitions, are amended to prohibit the entry of a U.S. fishing vessel into the EEZ if that vessel has fished in, or has on board any fish harvested from, the Donut Hole.

U.S. fishermen, who displaced foreign fleets of those nations that had a traditional fishery presence in the EEZ off Alaska, now fully utilize the groundfish resources of the EEZ off Alaska. Foreign fishermen have redirected their fishing effort to other fishing grounds, specifically the Donut Hole, and likely other such waters. By the mid-1980's, catches in the Donut Hole were reported to exceed catches in both the U.S. EEZ or the economic zone (EZ) of Russia. (Table 1).

TABLE 1.—REPORTED POLLOCK CATCHES IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA

[1,000s metric tons (mt)]

Year	Donut Hole	U.S. EEZ	Russian Federation
1985	336	1,179	662
1986	1,061	1,189	871

TABLE 1.—REPORTED POLLOCK CATCHES IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA—Continued

[1,000s metric tons (mt)]

Year	Donut Hole	U.S. EEZ	Russian Federation
1987	1,325	1,253	812
1988	1,396	1,229	1,327
1989	1,399	1,386	1,119
1990	876	1,353	814

The Donut Hole encompasses deep waters of the Aleutian Basin. The Aleutian Basin extends south into that part of the U.S. EEZ known as the Bogoslof District, defined at 50 CFR 675.2 as statistical area 518. Commercial fisheries data and scientific investigations on comparison of age, size composition, size-at-age and genetic structure demonstrate that pollock found in the Donut Hole and the Bogoslof District are from the same Aleutian Basin stock.

The status of the Aleutian Basin pollock stock is depressed. Even though the abundance of this stock was estimated at about 5 million mt in 1987, it has declined to a low of about 0.5 million mt in 1990. The current low level of pollock abundance is consistent with catch per unit of effort (CPUE) information obtained from the commercial fishery, as well as from NMFS stock survey data.

The Secretary implemented specifications for acceptable biological catch and total allowable catch (TAC) amounts for pollock in the Bogoslof District for 1992 equal to 25,000 mt and 1,000 mt, respectively, at 57 FR 3952 February 3, 1992. The Secretary implemented these specifications as recommended by the Council at its December 1991 meeting in response to the decline in the Aleutian Basin pollock stock.

Notwithstanding this action in the U.S. EEZ to conserve the Aleutian Basin pollock stock, U.S. vessels will continue to over-exploit this stock by fishing in the Donut Hole. Because the Aleutian Basin pollock stock moves between the EEZ and the Donut Hole, fishing in both areas will expose this stock to greater fishing effort and result in overfishing. To protect the Aleutian Basin pollock stock from over-exploitation, the Council recommended that the Secretary prohibit federally permitted U.S. fishing vessels from (1) fishing in the Donut Hole and (2) possessing or retaining on board in the EEZ off Alaska, fish caught in the Donut Hole. Even though pollock comprise more than 90 percent of the total harvests in the Donut Hole, NMFS decided that to promote efficient enforcement, a federally permitted U.S. vessel should be prohibited from fishing in the Donut Hole.

On November 18, 1991, the Third Conference on the Central Bering Sea was held in Washington, DC. At that conference, delegations from the United States, the Russian Federation, the People's Republic of China, the Republic of Korea, Poland and Japan discussed measures relating to the conservation and management of living marine resources of the Central Bering Sea, and specifically the pollock resources. The United States indicated that it would take strict measures in 1992 to conserve the depressed Aleutian Basin pollock stock. The United States reiterated its strong support of a proposal made at the Second Conference by the Russian delegation that all countries agree to a moratorium on pollock fishing in the Central Bering Sea in 1992. At the Third Conference, Russia contended once again that a moratorium on further pollock fishing in the Donut Hole is urgently needed to conserve the Aleutian Basin pollock stock and indicated its readiness to reduce substantially Russian fishing effort on pollock in its EZ. Also noted at the Third Conference was the fact that continuation of the pollock fishery in the Central Bering Sea would lead to a further disastrous decline of the resource.

In keeping with the U.S. policy of a moratorium on Donut Hole fishing, NMFS is issuing this final rule. The delayed effective date is to provide time for a federally permitted U.S. vessel that has a 1992 groundfish permit for the EEZ off Alaska to surrender it to NMFS if that vessel will continue or if it plans to fish in the Donut Hole, or to carry or transship Donut Hole resources in the EEZ off Alaska. A fishing vessel that surrenders its Federal fisheries permit to NMFS after the effective date of these regulations in order to (1) continue fishing operations in the Donut Hole, (2) begin fishing operations in the Donut Hole or (3) carry or transship Donut Hole resources in the EEZ is prohibited from fishing in the groundfish fisheries off Alaska for the remainder of the 1992 fishing year. In the future, a U.S. vessel that has been issued a Federal groundfish permit under 50 CFR parts 672 and 675 will be prohibited from fishing in the Donut Hole for that year.

NMFS anticipates that U.S. vessels will fish for pollock in the Donut Hole in the 1992 fishing year following the closure of the directed pollock fishery in the EEZ when the A season TAC for pollock, provided for at 50 CFR 675.20(a)(ii), is reached. This closure occurred March 6, 1992. Such U.S. vessels will be subject to the provisions of this rule.

Classification

This action is exempt from the provisions of E.O. 12291 under section 1(a)(2) because these regulations are issued with respect to foreign affairs functions of the United States. This action is not subject to section 553 of the Administrative Procedure Act because it involves a foreign affairs function, and is, therefore, not subject to the provisions respecting a 30-day delay of its effective date.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **FOR FURTHER INFORMATION CONTACT**).

NMFS has determined that implementation of this rule is not likely to affect listed species in a manner or to an extent not already considered in formal consultations on these fisheries completed on April 19, 1991, June 5, 1991, and September 20, 1991.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, a definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 672.2. Definitions.

* * * * *

Donut Hole means the international waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States.

* * * * *

3. In § 672.4, paragraph (j) is added to read as follows:

§ 672.4 Permits.

* * * * *

(j) *Condition.* No person may use a U.S. vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole during the fishing year for which the permit has been issued.

4. In § 672.7, paragraphs (h) and (i) are added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) Fish in the Donut Hole with a U.S. vessel that has been issued a fishing permit under § 672.4 of this part during the fishing year for which the permit was issued.

(i) Possess or retain on board a federally permitted U.S. fishing vessel permitted under § 672.4 of this part within the Gulf of Alaska fish harvested from the Donut Hole.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, a definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Donut Hole means the international waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States.

* * * * *

7. In § 675.4, paragraph (j) is added to read as follows:

§ 675.4 Permits.

* * * * *

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole during the fishing year for which the permit has been issued.

8. In § 675.7, paragraphs (i) and (j) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) Fish in the Donut Hole with a U.S. vessel that has been issued a Federal fishing permit under § 675.4 of this part during the fishing year for which the permit was issued.

(j) Possess or retain on board a federally permitted U.S. fishing vessel permitted under § 675.4 of this part within the Bering Sea and Aleutian Islands management area fish harvested from the Donut Hole.

Dated: July 23, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-17913 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of directed fishing.

SUMMARY: NMFS is closing the directed fishery for pollock by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of pollock total allowable catch (TAC) for the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 28, 1992, until 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The current allowance of pollock TAC to the offshore component in the BS is 434,995 metric tons (mt) (57 FR 32925, July 24, 1992).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock allowance available for harvest by the offshore component in the BS will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 415,000 mt, and is setting aside the remaining 19,995 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the BS by the offshore component effective from 12 noon, A.l.t., July 28, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18127 Filed 7-28-92; 12:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92-049-1]

Black Stem Rust; Addition of Rust-Resistant Varieties of Berberis Thunbergii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the black stem rust quarantine and regulations to add *Berberis gladwynesis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid *Bailsel*, *Berberis koreana* X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," and *Berberis thunbergii* "Monlers" to the list of rust-resistant *Berberis* species. This change would allow for the movement of these newly developed varieties without unnecessary restrictions.

We are also proposing to add *Berberis thunbergii* "Crimson Pygmy" to the list of rust-resistant *Berberis* species. After a review of the relevant literature, we have determined that *Berberis thunbergii* "Crimson Pygmy" is a synonym for *Berberis thunbergii atropurpurea nana*, which is already included on the list of rust-resistant species. The addition of *Berberis thunbergii* "Crimson Pygmy" to the list would allow that variety to be marketed under its preferred U.S. name.

DATES: Consideration will be given only to comments received on or before August 31, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782. Please state that your comments refer to Docket No. 92-049-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust; rust-susceptible plants do pose such a risk.

Section 301.38-2 of the regulations includes a listing of regulated articles, and indicates which species of the genera *Berberis*, *Mahoberberis*, and *Mahonia* are rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In this proposed rule, we are proposing to add *Berberis gladwynensis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid *Bailsel*, *Berberis koreana* X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," *Berberis thunbergii* "Crimson Pygmy," and *Berberis thunbergii* "Monlers" to the list of rust-resistant *Berberis* species in § 301.38-2(b).

The proposed addition of *Berberis gladwynensis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid *Bailsel*, *Berberis koreana* X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," and *Berberis thunbergii* "Monlers" to the list of rust-resistant *Berberis* species is based on recent rust-resistant testing conducted by the Agricultural Research Service on the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result, before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants. *e.g.*, 6 plants tested twice or 3 plants tested 4 times. The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

The proposed addition of *Berberis thunbergii* "Crimson Pygmy" to the list of rust-resistant *berberis* species is based on a review of the relevant literature. As a result of that review, we have determined that *Berberis*

thunbergii "Crimson Pygmy" is a synonym for *Berberis thunbergii atropurpurea nana*. Because the variety *atropurpurea nana* is already included on the list of rust-resistant *Berberis* species (and cultivars) in § 301.38–2(b), and because there is no question that "Crimson Pygmy" is a legitimate synonym for *atropurpurea nana*, *Berberis thunbergii* "Crimson Pygmy" can be added to the list of rust-resistant *Berberis* species without any additional testing by the Cereal Rust Laboratory.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would allow the interstate movement of *Berberis gladwynensis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid Bailsel, Berberis koreana X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," *Berberis thunbergii* "Crimson Pygmy," and *Berberis thunbergii* "Monlers" into and through States or parts of States designated as protected areas. We have determined that this proposed change in the regulations would affect two commercial nurseries that might propagate the new species and numerous retail sales nurseries that might purchase and resell the varieties. The proposed change would enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas. It is unlikely that the addition of these varieties to the list of rust-resistant *Berberis* species would have any effect on prices, investment, productivity, or our international competitive position. It is possible that this change would positively affect innovation by allowing nurseries that develop new rust-resistant *Berberis* varieties the opportunity to market those varieties in protected areas. It is also possible that the proposed change would have some positive effect on nurseries that are small businesses by providing an opportunity for increased sales of rust-resistant *Berberis* species in protected areas. We cannot predict the exact number of nurseries that might be affected by the proposed change, nor can we predict the level of demand for these new species or the impact on nurseries producing or selling them. It is likely, however, that any effects would be positive as a result of additional plant sales.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmentl consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.38–2, paragraph (b) would be amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

§ 301.38–2 Regulated articles.

* * * * *

B. gladwynensis "William Penn".

* * * * *

B. koreana X *B. thunbergii* hybrid *Bailsel.*

B.Koreana X *B. thunbergii* hybrid *Tara.*

* * * * *

B. thunbergii atropurpurea "Intermedia".

* * * * *

B. thunbergii "Crimson Pygmy".

* * * * *

B. thunbergii "Monlers".

* * * * *

Done in Washington, DC, this 28th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–18167 Filed 7–30–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AAL–2]

Proposed Alteration and Establishment of VOR Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of VOR Federal airways located in the State of Alaska and to establish six new airways to replace the alternate airway segments in the descriptions of V–321, V–438, V–444, and V–506. The proposed actions is in support of the FAA agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway segments from the National Airspace System (NAS).

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 92–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC,

weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AAL-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal airways located in the State of Alaska and to establish six new airways to replace the alternate airway segments in the descriptions of V-321, V-438, V-444, and V-506. The proposed action is in support of the FAA agreement with ICAO to eliminate all alternate airway segments from the NAS. The airspace designations for existing Federal airways listed in this document are published in § 71.125 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations for these airways, and the airspace designations for the new airways proposed in this document, would be published subsequently in Section 71.125 of the Handbook, if this regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal Airways.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.125 Alaskan VOR Federal Airways

* * * * *

V-301 [New]

From Fairbanks, AK; INT Fairbanks 046°T (018°M) and Fort Yukon, AK, 198°T(186°M) radials; to Fort Yukon.

V-302 [New]

From Fairbanks, AK; INT Fairbanks 016°T (348°M) and Fort Yukon, AK, 228°T (198°M) radials; to Fort Yukon.

* * * * *

V-321 [Revised]

From Cape Newenham, AK, NDB via King Salmon, AK; to Homer, AK.

V-322 [New]

From Cape Newenham, AK, NDB; King Salmon, AK; INT King Salmon 087°T(066°M) and Homer, AK, 237°T(213°M) radials; to Homer.

* * * * *

V-438 [Revised]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL, 29 miles 55 MSL, 40 miles 12 AGL, via Homer, AK; INT Homer 027° and Anchorage, AK, 198° radials; Anchorage; Big Lake, AK; Fairbanks, AK; Fort Yukon, AK; 89 miles 12 AGL, 52 miles 95 MSL, 27 miles 75 MSL, 61 miles 12 AGL, Deadhorse, AK; to Barrow, AK.

V-439 [New]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL; INT Kodiak 358°T(335°M) and Homer, AK, 209°T(185°M) radials; 33 miles 55 MSL, 40 miles 12 AGL; to Homer.

* * * * *

V-444 [Revised]

From Barrow, AK, 117 miles 12 AGL, 102 miles 95 MSL, 69 miles 12 AGL, Evansville, AK, NDB; Bettles, AK; Fairbanks, AK; Big Delta, AK; Northway, AK; Burwash, YT, Canada.

V-445 [New]

From Bettles, AK; INT Bettles 155°T(128°M) and Fairbanks, AK, 307°T(279°M) radials; to Fairbanks.

* * * * *

V-506 [Revised]

From INT Kodiak, AK, 107° radial and the Anchorage Oceanic CTA/FIR boundary, 37 miles 20 MSL, 24 miles 12 AGL, via Kodiak; 50 miles 12 AGL, 50 miles 95 MSL, 51 miles 12 AGL, King Salmon, AK; 51 miles 12 AGL, 84

miles 70 MSL, 63 miles 12 AGL, Bethel, AK; Nome, AK; 35 miles 12 AGL, 71 miles 55 MSL, 53 miles 12 AGL, Kotzebue, AK; Hotham, AK, NDB; 69 miles 12 AGL, 124 miles 95 MSL, 98 miles 12 AGL, Barrow, AK.

V-507 [New]

From Nome, AK; 38 miles 12 AGL, 71 miles 55 MSL; INT Nome 009°T(352°M) and Kotzebue, AK, 222°T(202°M) radials; 56 miles 12 AGL; to Kotzebue.

* * * * *

Issued in Washington, DC, on July 23, 1992.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-18148 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 92-ASO-2]

Proposed Establishment of VOR Federal Airway V-373; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate VOR Federal Airway V-373 in the vicinity of Greensboro, NC. V-373 would be extended from Greensboro direct to Sand Hills, NC. Currently, there is no airway between those terminal areas, causing circuitous routing for operations between them. This action would improve flight planning and save fuel.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 92-ASO-2, Federal Aviation Administration, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3486. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate VOR Federal; Airway V-373 between Greensboro, NC, and Sand Hills, NC. Currently, there is no airway between those terminal areas, causing a circuitous routing for operations between them. This action would improve flight planning and save fuel. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal Airways.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-373 [New]

From Greensboro, NC, to Sand Hills, NC.

* * * * *

Issued in Washington, DC, on July 24, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-18149 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M#

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515-AA84

Proposed Customs Regulations Amendments Relating to the United States-Israel Free Trade Area Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend to Customs Regulations to implement the duty preference provisions of the Agreement which established the United States-Israel Free Trade Area.

DATES: Comments must be received on or before September 29, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Maritza Castro, Office of Trade Operations (202-566-2597); Legal Aspects: Craig Walker, Office of Regulations and Rulings (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations for the establishment of a U.S.-Israel free trade area which would eliminate tariffs and other trade-distorting practices between the two countries. Section 401 of the Trade and Tariff Act of 1984 (Public Law 98-573) amended section 102 of the Trade Act of 1974, 19 U.S.C. 2112, to authorize the President to enter into a bilateral trade agreement with Israel to establish a free trade area, subject to Congressional approval of implementing legislation. Section 402 of the 1984 Act, codified at 19 U.S.C. 2112 note, set forth specific country of origin and related criteria for any reduction or elimination of United States duties provided for in a trade agreement with Israel, and subsection (c) thereof directed the Secretary of the Treasury to prescribe such regulations a may be necessary to carry out the provisions of that section, after consultation with the United States Trade Representative.

Negotiations for the U.S.-Israel free trade area were concluded on February 26, 1985, and, on April 22, 1985, representatives of the U.S. and Israeli Governments signed the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter, "the Agreement"). Annex 1 of the Agreement sets forth the terms for immediate elimination or staged reduction of duties on products of Israel, with all products to become duty free on January 1, 1995. Annex 3 of the Agreement sets forth the rules of origin, including documentary requirements, which apply for purposes of free or reduced duty treatment under the Agreement.

On April 29, 1985, President Reagan sent a message to Congress transmitting the text of the Agreement, the text of a proposed United States-Israel Free Trade Area Implementation Act, and a proposed Statement of Administration Action to implement the Agreement; the President's message and the materials transmitted therewith were reprinted as House Document 99-61, 99th Congress, 1st Session. On June 11, 1985, the United States-Israel Free Trade Area Implementation Act of 1985, Public Law 99-47, was enacted. Sections 3 and 4 of this Act, codified at 19 U.S.C. 2112 note, approved the Agreement and Statement of Administrative Action as submitted to Congress and authorized the President to proclaim tariff modifications necessary to carry out the schedule of duty reductions with respect to Israel set forth in Annex 1 of the Agreement; section 5(b), also codified at 19 U.S.C. 2112 note, mandated the promulgation of regulations necessary or appropriate to carry out actions proposed in the Statement of Administrative Action in order to implement the Agreement. On August 30, 1985, President Reagan signed Proclamation 5365 which, *inter alia*, modified the tariff schedules to carry out the duty reductions under the Agreement, effective for articles entered, or withdrawn from warehouse for consumption, on and after September 1, 1985. The rules of origin and regulatory authority provisions, as contained in section 402 of the 1984 Act and as set forth in Annex I of the Proclamation are not set forth as General Note 3(c)(vi), Harmonized Tariff Schedule of the United States (HTSUS), and the specific duty treatment accorded to individual products under the Agreement is reflected throughout the HTSUS in the Special rate of duty subcolumn where the symbol "IL" appears in parentheses.

The U.S. Customs Service is responsible for the administration of laws and regulations regarding the entry of merchandise into the United States. Moreover, section III. B. of the Statement of Administrative Action submitted to Congress states that "Customs Service regulations will be amended to reflect the entry requirements for articles to be entered under the Agreement." Thus, the proposed regulations set forth in this document are directed specifically to those portions of the Agreement which concern the rules of origin and related provisions governing the duty-free or reduced-duty treatment of products imported from Israel. These rules do not confer origin or establish a criterion for determining origin of imported goods for any other purpose. For example, origin determinations for country or origin marking purposes under 19 U.S.C. 1304 are not affected.

The basic rules of origin set forth in Annex 3 of the Agreement (which are derived from section 402 of the Trade and Tariff Act of 1984, *supra*) are based on section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)), which contains the origin rules governing duty-free treatment under the Caribbean Basin Initiative (CBI). Thus, in order to be eligible for reduced or duty-free treatment under the Agreement, an article imported from Israel must meet three basic requirements: (1) It must be imported directly from Israel into the customs territory of the U.S., (2) it must have its origin in Israel, *i.e.*, it either must be wholly the growth, product, or manufacture of Israel or must be a new or different article of commerce that has been grown, produced, or manufactured in Israel, and (3) it must have a minimum domestic content, *i.e.*, at least 35 percent of its appraised value must be attributed to the cost or value of materials produced in Israel plus the direct costs of processing operations performed in Israel. Annex 3 of the Agreement further parallels the origin rules in the CBI statute and implementing regulations (19 CFR 10.191-10.198) in that (1) the definitions or explanations of "imported directly", "wholly the growth, product, or manufacture", "cost or value of materials", and "direct costs of processing operations" are essentially the same as those under the CBI, (2) the cost or value of U.S.-produced materials may be counted toward the Israeli domestic content requirement to a maximum of 15 percent of the appraised value of the imported article, and (3) simple combining or packaging

operations or mere dilution with water or another substance will confer neither Israeli origin on an imported article nor Israeli or U.S. origin on a constituent material of an imported article.

Annex 3 of the Agreement sets forth documentary requirements to demonstrate compliance with the origin criteria, similar to the documentation used under the CBI and under the Generalized System of Preferences (GSP). Thus, the Agreement provides for submission of (1) a Certificate of Origin when the claim for duty-free or reduced-duty treatment is made and (2) a declaration setting forth the details (concerning the production or manufacture of the imported article) which were used to prepare the Certificate of Origin. Although the requirements for completion and submission of both documents are similar to those under the CBI and GSP, there are some differences which are discussed in the section-by-section discussion below.

In view of the similarity between the rules of origin under the Agreement and those under the CBI, the proposed regulations set forth in this document are based in significant part on the CBI regulations. However some variations have been made from the CBI approach, in some cases to reflect particular requirements under the Agreement and in other cases to simplify or otherwise improve on the layout of the CBI regulations. The proposed regulations are discussed in detail below.

Section-by-Section Discussion

Section 10.211 Scope

This section sets forth a general statement of the purpose of the regulations with reference to the Agreement and the implementing legislation relating thereto. The section is modeled on section 10.301 of the United States-Canada Free Trade Agreement (CFTA) implementing regulations (19 CFR 10.301). As in the case of the CFTA regulation, the last sentence is merely intended to clarify that the regulations apply only for duty preference purposes under the Agreement and not for purposes of country of origin determinations under other laws and regulations. Application of U.S. rules of origin will ordinarily result in a finding of a single country of origin for all purposes under U.S. customs law. However, as U.S. courts have ruled, there might be situations in which U.S. law compels different results under different country-of-origin provisions because of the language of the particular statutes being applied. Accordingly, the last sentence of this section reflects the ordinary operation of U.S. customs law.

Section 10.212 Definitions

This section sets forth definitions of terms that are used throughout the regulations under the Agreement.

Paragraph (a), which defines "Agreement", is self-explanatory.

Paragraph (b) is taken from Annex 3, paragraph 3, of the Agreement which was based on a similar provision in section 10.191(b)(3) of the CBI implementing regulations (19 CFR 10.191(b)(3)). Paragraph (b) is identical to the Agreement text except that reference is made to "Israel" rather than to a "Party" to reflect a U.S. import context.

Paragraph (c) reflects the standard definition of "entered" and is identical to the definition set forth in section 10.191(b)(4) of the CBI regulations (19 CFR 10.191(b)(4)).

Section 10.213 Eligibility Criteria in General

This section is modeled on the approach taken in section 10.302 of the CFTA implementing regulations (19 CFR 10.302) which makes a general reference to the requirements for preferential duty treatment with cross-references to the specific sections which set forth those requirements in detail. Customs believes that this general statement/cross-reference approach will facilitate the reader's overall understanding of the program and the requirements thereunder.

Section 10.214 Imported Directly

This section sets forth the "imported directly" requirement which is stated in Annex 3, paragraph 1(b), of the Agreement and which is defined in Annex 3, paragraph 8, of the Agreement. The Agreement provisions are based on section 10.193 of the CBI regulations (19 CFR 10.193).

The opening sentence of this section is similar to the opening statement in the CBI regulation. Although the expression "customs territory of the U.S." does not appear in the Agreement, it is used in the CBI regulation and must be included here because if appears in section 402 of the Trade and Tariff Act of 1984, *supra*, and in General Note 3(c)(vi)(B)(2), HTSUS.

Paragraphs (a)–(c) of this section incorporate the following minor editorial deviations from the language contained in Annex 3, paragraph 8, of the Agreement: (1) Use of "U.S." and "Israel", as appropriate, rather than "Party", (2) use of the past tense in some instances to reflect a U.S. import context, (3) addition of the words "while en route to the U.S." in paragraph (b) for the sake of clarity and to align on the corresponding CBI regulatory provision, and (4) replacement of the words "provided that" by "and" in paragraph (c)(2). In addition, paragraph (c) does not incorporate the fourth requirement of Annex 3, paragraph 8(c), of the Agreement (regarding compliance with the origin requirements under the Agreement). The Agreement provision was based on corresponding GSP and CBI regulatory provisions which were in effect when the Agreement was negotiated but which were subsequently deleted when the final CBI regulations were published (on the reasoning that the provision was redundant because goods must always meet the origin requirements in order to receive the duty preference under those program). Customs believes that this Agreement provision is equally unnecessary in the present context and thus should not be included in this section.

None of the variances from the Agreement text discussed above constitutes a substantive departure from the terms of the Agreement. Since the Agreement text was based on the CBI regulations, this proposed section will be interpreted in a manner which is consistent with interpretations of the CBI regulatory provisions.

Section 10.215 Country of Origin Criteria

This section sets forth the basic country of origin rules which apply under the Agreement. The Agreement rules were derived from the rules which apply under the CBI.

Paragraph (a) states the general rule that the article must be a product of Israel. Paragraph (a)(1), which refers to articles "wholly" the growth, product, or manufacture of Israel, is based on language in Annex 3, paragraph 1(a), of the Agreement. It is noted that the word "wholly" does not appear in the text of either section 402 of the 1984 Act or General Note 3(c)(vi)(B)(1), HTSUS. Customs believes that, as in the case of the CBI, the basic country of origin distinction must be between articles which are "wholly" the product of a country (in which case no change in country of origin has ever taken place) and articles which originated in one country and are later substantially transformed into a product of a second country. Paragraph (a)(2) states the substantial transformation rule and reflects language contained in Annex 3, paragraphs 1(a) and 4, of the Agreement. With the exception of the words "having a new name, character, or use", the language is identical to the wording in

the U.S. implementing legislation. The reference to a new name, character, or use is taken from Annex 3, paragraph 4, of the Agreement (which defines "country of origin" for purposes of the Agreement) and merely reflects the traditional test used to determine whether a new or different article has been created.

Paragraph (b) sets forth the simple combining or packaging or mere dilution exceptions contained in Annex 3, paragraph 2, of the Agreement and in the U.S. implementing legislation. The parenthetical express "as opposed to complex or meaningful" in paragraph (b)(1) is intended for clarification only and is based on an identical reference in section 10.195(a)(1) of the CBI regulations (19 CFR 10.195(a)(1)). In order to avoid unnecessary repetition, and in consideration of the fact that these exceptions were taken directly from the CBI origin rules, the last sentence of this paragraph simply makes a cross-reference to the CBI regulatory provision which explains the exceptions in detail.

Section 10.216 Value Content Requirement

This section sets forth the provisions which relate to the 35 percent value content requirement under the Agreement. In addition to a statement of the basic requirement, it contains provisions which are almost identical to sections 10.196 and 10.197 of the CBI regulations (19 CFR 10.196 and 10.197).

Paragraph (a) sets forth the basic requirement as contained in Annex 3, paragraph 1(c), of the Agreement and in the implementing legislation.

Paragraph (b) concerns the cost or value of materials countable toward the 35 percent requirement and is based on provisions contained in the Agreement, in the implementing legislation and in section 10.196 of the CBI regulations.

Paragraph (b)(1) defines "materials produced in Israel" in a manner similar to the approach in section 10.196(a) of the CBI regulations. Paragraph (b)(1)(ii) was specifically drafted to reflect (1) the application of the simple combining or packaging or mere dilution language to materials as provided in Annex 3, paragraph 2, of the Agreement and (2) the country of origin language which also applies to materials under Annex 3, paragraph 4, of the Agreement. The last sentence of paragraph (b)(1) cross-references to the useful examples contained in CBI section 10.196(a), and the words "except where the context otherwise requires" are intended to alert the reader to the fact that some aspects of those examples apply only in a CBI context.

Paragraph (b)(2) concerns the inclusion of U.S.-produced materials up to 15 percent of appraised value, as provided for in Annex 3, paragraph 5, of the Agreement and in the implementing legislation. The regulatory language is similar to CBI section 10.195(c), refers to materials produced "in the customs territory of the U.S." to align on the implementing legislation language, and provides that the origin rules applicable to Israeli materials also apply to such U.S. materials as stated in the Agreement.

Paragraph (b)(3) is taken directly from CBI section 10.196(b).

Paragraph (b)(4) sets forth the elements includable under the cost or value of materials as provided in Annex 3, paragraph 6, of the Agreement, which was based on section 10.196(c) of the CBI regulations. This paragraph refers to both Israeli and U.S. materials (to which the same rules must apply), and the last sentence reflects Agreement language taken directly from the last sentence of the CBI regulation.

Paragraph (c) sets forth provisions regarding direct costs of processing operations under the 35 percent requirement, as contained in Annex 3, paragraph 7, of the Agreement (essentially identical to section 10.197 of the CBI regulations, the format of which is followed here). Although the implementing legislation also covers this aspect of the Agreement, the Agreement text is followed here because it is more complete and is consistent with the legislative intent.

Paragraph (d), which states the presumption of compliance with the 35 percent requirement in the case of articles wholly produced in Israel, is based on section 10.195(d) of the CBI regulations.

Section 10.217 Procedures for Filing Duty Preference Claim and Submitting Supporting Documentation

This section is intended to cover all procedural requirements, including the submission of supporting documentation, under the Agreement. Customs believes that discussion of all procedural aspects, after the sections dealing with legal requirements, is an improvement over the organization found in the CBI regulations and will facilitate understanding and application of the regulations under the Agreement.

Paragraph (a), which concerns the procedure for filing a claim for a preference, is based on CBI section 10.192 but does not contain the first sentence of the CBI provision which Customs believes is redundant and thus unnecessary. The exception language at the beginning of the first sentence is intended to reflect the fact that those procedures do not apply in the case of an informal entry.

Paragraph (b), which sets forth documentary requirements under formal entry procedures, contains the Certificate of Origin and declaration requirements contained in Annex 3, paragraph 9, of the Agreement which was modeled on the requirements set forth in CBI section 10.198.

Paragraph (b)(1) discusses the Certificate of Origin and is based on CBI section 10.198(a)(1). It differs from the CBI provision principally (1) by making reference to a dual use (GSP/Agreement) Certificate to reflect the layout of the document reproduced as Attachment II to Annex 3 of the Agreement, and (2) by inclusion of the last two sentences which reflect the requirements for completing boxes 11 and 12 on the Certificate as adopted for use under the Agreement.

Paragraph (b)(2) concerns duplicate Certificates of Origin and is taken directly from CBI section 10.198(a)(3).

Paragraph (b)(3) concerns waiver of the Certificate of Origin, which is provided for in the Agreement. It combines CBI section 10.198(a)(4) with CBI section 10.198(a)(2) but without any reference to the bonding procedure contained in the latter CBI provision. The absence of a bonding provision is based on a policy decision taken by Customs, reflected in Customs Directive 3550–27 dated September 8, 1987, to reduce paperwork by requiring neither a bond for production of a missing document (such as the Certificate of Origin) nor actual submission of the missing document unless Customs specifically makes a request for it in writing. In order to be consistent with this Customs policy and with the Agreement which refers to only submission or waiver of the Certificate of Origin, this subparagraph states that, where the Certificate is not submitted with the entry summary, it is deemed to be waived unless Customs requests it in writing.

Paragraph (b)(4) concerns the supporting declaration and is based on CBI sections 10.198(c)(1) and (2). Although the Agreement does not specifically limit use of the declaration to cases involving articles not wholly the growth, product, or manufacture of Israel, Customs believes this limitation should apply for the same reason that it has applied under the CBI. Paragraph (b)(4)(i) essentially follows CBI section 10.198(c)(1) except that the wording of the declaration itself reflects the specific elements of information required under Annex 3, paragraph 9, of the Agreement

that are not required under the CBI (in particular, separate listings of materials wholly produced in Israel or the U.S. and of materials which retained third country origin). Paragraph (b)(4)(ii) is taken from CBI section 10.198(c)(2) without change.

Paragraph (c), which concerns informal entries, is based on CBI section 10.198(b) but also clarifies that fact that the procedures for filing claims in formal entry situations do not apply to informal entries.

Paragraph (d) concerns evidence of direct shipment and is based on CBI section 10.194. However, the last sentence of CBI section 10.194(a) has been omitted because it is covered by paragraph (e) discussed below.

Paragraph (e) concerns verification of documentation and is based on CBI section 10.198(d), but it refers to all documentation submitted under the section rather than only to evidence of country of origin.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12291

Because no notice of proposed rulemaking is required pursuant to 5 U.S.C. 552(a)(1), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12291 do not apply. The economic impact of the United States-Israel Free Trade Area, which these proposed amendments would implement, flows from the Agreement and authorizing legislation with which these proposed amendments are merely in conformity.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in section 10.217. This information is required by Customs under the Agreement and pursuant to General Note 3(c)(vi)(E), HTSUS, and is used to determine whether imported merchandise meets the eligibility criteria for duty-free or reduced-duty treatment under the Agreement. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 14,406 hours.

The estimated average annual burden per respondent/recordkeeping is .2616 hours.

Estimated number of respondents and/or recordkeepers: 5550.

Estimated annual frequency of responses: 8.92.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports, Israeli Products.

Proposed Amendments to the Regulations

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 is amended by adding an authority for §§ 10.211–10.217 to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

§§ 10.211–10.217 Also issued under 19 U.S.C. 2112 note.

2. Part 10 is amended by adding a new center heading followed by new sections 10.211 through 10.217 to read as follows:

United States-Israel Free Trade Area Agreement

United States-Israel Free Trade Area Agreement

§ 10.211 Scope.

The provisions of §§ 10.212—10.217 relate to the eligibility criteria and procedures for obtaining duty preferences for goods imported from Israel and designated for such preferences in General Note 3(c), Harmonized Tariff Schedule of the United States (HTSUS), and in the "special" rate of duty column of the HTSUS. These preferences were the subject of the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, and approved under the United States-Israel Free Trade Area Implementation Act of 1985 (99 Stat. 82). In situations involving country of origin determinations for imported goods subject to bilateral restrictions or prohibitions or country of origin marking requirements under other provisions of law, other criteria for determining origin may be applicable.

§§ 10.212 Definitions.

The following definitions apply for the purposes of §§ 10.213 through 10.217:

(a) *Agreement.* "Agreement" means the agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985.

(b) *Wholly the growth, product, or manufacture of Israel.* "Wholly the growth, product, or manufacture of Israel" refers both to any article which has been entirely grown, produced, or manufactured in Israel and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in Israel, as distinguished from articles or materials imported into Israel from another country, whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into Israel.

(c) *Entered.* "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

§ 10.213 Eligibility criteria in general.

Articles classifiable under an HTSUS heading or subheading for which the symbol "IL" appears in the "special" column are eligible for a preference if each of the following requirements is met:

(a) *Imported directly.* The articles are imported directly from Israel as provided in § 10.214.

(b) *Country of origin criteria.* The articles comply with the country of origin criteria set forth in § 10.215.

(c) *Value content requirement.* The articles comply with the value content requirement set forth in § 10.216.

(d) *Filing of claim and submission of supporting documentation.* The claim for the preference is filled, and the documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.217.

§ 10.214 Imported directly.

In order to be eligible for a preference under the Agreement, an article shall be imported directly from Israel into the customs territory of the U.S. For purposes of this requirement, the words "imported directly" mean:

(a) Direct shipment from Israel to the U.S. without passing through the territory of any intermediate country; or

(b) If shipment was through the territory of an intermediate country, the articles in the shipment did not enter into the commerce of any intermediate country while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipment was through an intermediate country and invoices and other documents do not show the U.S. as the final destination the articles in the shipment, upon arrival in the U.S., are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail, and the articles are imported into the U.S. as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.215 Country of origin criteria.

(a) *General.* An article may be eligible for a preference under the Agreement only if the article is either:

(1) Wholly the growth, product, or manufacture of Israel, or

(2) A new or different article of commerce having a new name, character, or use, that has been grown, produced, or manufactured in Israel.

(b) *Exceptions.* No article shall be considered a new or different article of commerce for purposes of the Agreement by virtue of having merely undergone:

(1) Simple (as opposed to complex or meaningful) combining or packaging operations, or

(2) Mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

The principles and examples set forth in § 10.195(a)(2) shall apply equally for purposes of this paragraph.

§ 10.216 Value content requirement.

(a) *General.* An article may be eligible for a preference under the Agreement only if the sum of the cost or value of the materials produced in Israel, plus the direct costs of processing operations performed in Israel, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Cost or value of materials*—(1) "Materials produced in Israel" defined. For purposes of paragraph (a) of this section, the words "materials produced in Israel" refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of Israel; or

(ii) Subject to the exceptions set forth in § 10.215(b), substantially transformed in Israel into a new or different article of commerce having a new name, character, or use, which is then used in Israel in the production or manufacture of a new or different article imported into the U.S.

Except where the context otherwise requires, the examples set forth in § 10.196(a) shall apply for purposes of paragraph (b)(1) of this section.

(2) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article may be attributed to the cost or value of materials produced in the customs territory of the U.S. the provisions of paragraph (b)(1) of this section shall apply for purposes of determining whether materials were produced in the customs territory of the U.S.

(3) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate district director, the material shall not be considered to have been grown, produced, or manufactured in Israel or in the customs territory of the U.S.

(4) *Determination of cost or value of materials.* (i) The cost or value of materials produced in Israel or in the customs territory of the U.S. includes:

(A) The manufacturer's actual cost for materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by Israel or the U.S., provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(c) *Direct costs of processing operations.* (1) *Items included.* For purposes of paragraph (a) of this section, the phrase "direct costs of processing operations" means those costs directly incurred in and/or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific article under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported article:

(i) All actual labor cost involved in the growth, production, manufacture, or assembly of the specific article, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific article;

(iii) Research, development, design, engineering, and blueprint costs insofar

as they are allocable to the specific article; and

(iv) Costs of inspecting and testing the specific article.

(2) *Items not included.* For purposes of paragraph (a) of this section, the phrase "direct costs of processing operations" does not include items which are not directly attributable to the article under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific article or are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesman's salaries commissions, or expenses.

(d) *Articles wholly the growth, product, or manufacture of Israel.* Any article which is wholly the growth, product, or manufacture of Israel, including articles produced or manufactured in Israel exclusively from materials which are wholly the growth, product, or manufacture of Israel, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.217 Procedures for filing duty preference claim and submitting supporting documentation.

(a) *Filing claim for duty preference.* Except as provided in paragraph (c) of this section, a claim for a duty preference under the Agreement may be made at the time of filing the entry summary by placing the symbol "IL" as a prefix to the HTSUS subheading number applicable to each article for which the preference is claimed on that document. If the duty preference is claimed subsequent to the time of filing the entry summary but before liquidation becomes final, the filing of the Certificate of Origin or declaration, as described in paragraph (b) of this section, shall constitute the written claim.

(b) *Shipments covered by a formal entry.*—(1) *Certificate of Origin.* Except as provided in paragraph (b)(3) of this section, the importer or consignee or other appropriate party having knowledge of the relevant facts regarding a shipment of merchandise covered by a formal entry, for which a duty preference is claimed under the Agreement, shall file with the district director with the entry summary, as evidence of compliance with the country of origin and value content requirements, a Certificate of Origin Form A adopted for use under the Generalized System of Preferences (GSP) but modified for dual use either under the GSP or under the Agreement. The Certificate of Origin shall be properly completed, with the declaration in box 12 signed in Israel by the exporter or other authorized party having knowledge of the facts to which the declaration relates. The certification in box 11 shall not be used when the Certificate of Origin is to be filed for purposes of a duty preference under the Agreement.

(2) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director shall accept a duplicate Certificate of Origin endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(3) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for a duty preference under the Agreement. If a properly completed Certificate of Origin is not filed with the entry summary, the entry shall nevertheless be accepted and production of the Certificate of Origin shall be deemed to be waived, unless the district director makes a written request for its production.

(4) *Articles not wholly the growth, product, or manufacture of Israel*—(i) *Declaration.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of Israel, the party which prepared and signed the Certificate of Origin in Israel shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the article, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

Declaration

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in Israel by means of processing operations performed in Israel as set forth below, (b) incorporate materials wholly the growth, product or manufacture of Israel or of the customs territory of the United States as set forth below, (c) incorporate materials from the third countries identified below which became the growth, product, or manufacture of Israel or of the customs territory of the United States by means of the processing operations as set forth below, and/or (d) incorporate materials which are the growth, product, or manufacture of third countries as set forth below:

Numbers or marks of packages, invoices, bills of lading	Description of article and quantity	Processing operations performed on article in Israel		Material produced in Israel, the U.S. or third country	
		Description of processing operations	Direct costs of processing operations	Description of material, country of production and production process	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party which prepared and signed the Certificate of Origin for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of preferential duty treatment under the Agreement.

(c) *Shipments covered by an informal entry.* The normal procedure for filing a claim for preferential duty treatment as set forth in paragraph (a) of this section need not be followed in a case involving a shipment covered by an informal entry, and the filing of a Certificate of Origin is not required for such a shipment. However, the district director may require submission of other

evidence of entitlement to preferential duty treatment, and the filing of a Certificate of Origin may be required in a case involving consolidation of individual shipments under § 143.22 of this chapter.

(d) *Evidence of direct importation.* (1) *Submission.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.214.

(2) *Waiver.* The district director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for preferential duty treatment under the Agreement.

(e) *Verification of documentation.* The documentation submitted under this section to demonstrate compliance with the requirements for preferential duty treatment under the Agreement shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as fully dutiable.

Carol Hallett,

Commissioner of Customs.

Approved: July 1, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-17923 Filed 7-30-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 91N-0494]

Workshop to Review Warnings, Use Instructions, and Precautionary Information under Section 314 of the National Childhood Vaccine Injury Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is holding a public meeting, "Workshop to Review Warnings, Use Instructions, and Precautionary Information for Childhood Vaccines." Section 314 of the National Childhood Vaccine Injury Act (the NCVIA) (Pub. L. 99-660) mandated that the warnings, use instructions, and precautionary information of specified childhood vaccines be reviewed and that their adequacy in warning health care professionals of the nature and extent of dangers posed by such vaccines be determined. This precautionary information is contained in the package insert of each vaccine licensed by FDA. The purpose of this workshop is to allow for public comment on these package inserts.

DATES: The workshop will be held on Friday, September 18, 1992, from 8:30 a.m. to 4:30 p.m. Written comments by December 18, 1992.

ADDRESSES: The workshop will be held in Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Submit written requests for a single set of package inserts and summaries of information for the vaccines to the Congressional, Consumer, and International Affairs Staff (HFB-142), Metro Park North 3, Suite 109, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8228, facsimile 301-295-8266. Send two self-addressed, adhesive labels to assist that office in processing your requests. Submit written comments on the package inserts and summaries of information with the docket number found in brackets in the heading of this document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the package inserts and summaries of information will be available for public examination on August 3, 1992. A copy of the issues that FDA will present at the workshop will be available for public examination on September 1, 1992, in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Submit written requests for a single copy of issues that FDA will present at the workshop to the Congressional, Consumer, and International Affairs Staff (address above). Send two self-addressed, adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Karen Chaitkin, Center for Biologics Evaluation and Research (HFB-3), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-8483, facsimile 301-227-8079.

SUPPLEMENTARY INFORMATION: Under section 314 of the NCVIA, the Secretary of Health and Human Services (the Secretary) is required to review the warnings, use instructions, and precautionary information issued by manufacturers of specified vaccines and to determine by rule whether the information adequately warns health care providers of the dangers posed by the vaccines. The specified vaccines are those listed in section 2114 of the Public Health Service Act (the PHS Act) (42 U.S.C. 300aa-14), which was added by the NCVIA. The specified vaccines include Tetanus, Diphtheria, Pertussis, Measles, Mumps, Rubella, Live Oral Poliovirus, Poliovirus Vaccines Inactivated, and any combinations of these. If it is determined that the information on these vaccines is inadequate, the manufacturers are to be required to revise and reissue the information.

The information described in section 314 of the NCVIA is contained in package inserts provided to health care professionals by the vaccine manufacturers and approved by FDA. The Center for Biologics Evaluation and Research (CBER) has been reviewing the approved package inserts as part of the process of determining the adequacy of the information being issued. FDA regulations previously issued under authority of the PHS Act (42 U.S.C. 262) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) establish criteria for the adequacy of package inserts and other labeling for vaccines and other biological products. General criteria for labeling are set forth at 21 CFR parts 201 and 610. Specific labeling requirements for certain vaccines have also been established in 21 CFR parts 620 and 630. Consistent with the provisions of these existing regulations, some manufacturers have already updated the package inserts for certain vaccines since the NCVIA was enacted.

Another provision of the NCVIA, section 2126 of the PHS Act (42 U.S.C. 300aa-26), required the Secretary to develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child receiving one of the listed vaccines. The Centers for Disease Control developed vaccine information materials and issued a final rule requiring health care providers to provide such information prior to administering these vaccines. The final rule, published in the Federal Register of October 15, 1991 (56 FR 51798), was developed after extensive consultation with appropriate Government and nongovernment representatives.

In addition, under section 312 of the NCVIA, the Secretary had requested the Institute of Medicine (IOM) to prepare a report reviewing scientific studies on adverse events following pertussis or rubella vaccination. IOM published the report, "Adverse Effects of Pertussis and

Rubella Vaccines" on August 27, 1991. The IOM report on pertussis and rubella vaccines provides a useful summary of available scientific studies on adverse events related to these two vaccines. Also, under section 312 of the NCVIA, the Secretary is directed to amend the Vaccine Injury Table set forth in section 2114 of the PHS Act, if the findings in the IOM report so indicate. The report was presented at a public hearing of a Subcommittee of the National Vaccine Advisory Committee on November 8, 1991 (see 56 FR 54582, October 22, 1991). After consideration of the report findings and public comment, the Secretary will, if necessary, modify the Vaccine Injury Table through rulemaking.

Although many of the activities mandated by the NCVIA provisions are closely related, each has a somewhat different purpose or emphasis. For example, the rulemaking required by section 2126 of the PHS Act emphasized development of materials useful to parents or other legal representatives who may have little or no previous knowledge about these childhood vaccines. The rulemaking required by section 314 of the NCVIA focuses on information useful to health care providers who have medical training and may need detailed technical information about the vaccines.

Many of the issues discussed during the course of developing the vaccine information materials are also relevant to the review of the package inserts. However, there will also be issues related to content or format that are different with respect to package inserts. Many of those who participated in the process of developing the information materials may also be interested in this separate process of reviewing the package inserts. To provide an opportunity for all interested persons to participate in the process of reviewing the information provided by the vaccine manufacturers to health care providers, FDA is convening a workshop open to the public.

On August 3, 1992, approximately 6 weeks prior to the workshop to be held on September 18, 1992, FDA will place copies of the following on display at the Dockets Management Branch (address above): (1) The most recently approved package inserts; (2) the manufacturer's revised drafts of package inserts, and CBER's comments, if the revised package inserts have not been approved by the beginning of July 1992; or (3) the most recently approved package inserts, and CBER's comments, if the manufacturers have not sent any revised draft package inserts by the beginning of July 1992. Also on display will be copies of summaries of information which CBER believes to be appropriate for inclusion in the labeling. On September 1, 1992, the agency will place a copy of the issues FDA will present at the workshop on display at the Dockets Management Branch (address above). Single copies of the displayed materials can be obtained from the Congressional, Consumer, and International Affairs Staff (address above). The workshop will consist of presentations, exchanges of scientific and regulatory information, and discussions concerning the adequacy of the warnings, use instructions, and precautionary information contained in the package inserts. At the workshop, the agency will present a summary of the review process and a scientific discussion of the package insert reviews conducted by FDA for each of the childhood vaccines identified in section 2114 of the PHS Act. Other Government representatives, manufacturers, and interested parties will be given an opportunity to present their comments. Such oral presentations will be limited to 10 minutes or less. Requests to make presentations at the workshop should be sent to the contact person (address above) by August 18, 1992.

After a careful review of the scientific data and public comments received, FDA will publish a proposed rule in the **Federal Register**, setting out the agency's determination regarding adequacy of the package inserts and offering another opportunity for public comment before the agency makes a final determination which will be published in a final rule.

Dated: July 27, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18088 Filed 7-28-92; 8:45 a.m.]

BILLING CODE 4160-01-F

---

21 CFR Part 166

[Docket No. 82P-0186]

Margarine; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a tentative final rule to amend the standard of identity for margarine to remove the list of permitted emulsifiers and the maximum use level restrictions for each from the current standard and to retain the provision for the use of safe and suitable emulsifiers without specified limitations. Appropriate use levels for the emulsifiers are those no greater than necessary to accomplish the intended functional effect in the margarine. This action responds to a petition filed by the National Association of Margarine Manufacturers and will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by August 31, 1992. The agency proposes that any final rule that may be issued based upon this tentative final rule shall become effective 60 days after date of publication of the final rule in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of October 30, 1984 (49 FR 43560), FDA published a proposal, based on a petition from the National Association of Margarine Manufacturers (NAMM), 1101 Fifteenth St. NW., suite 202, Washington, DC 20005, to amend the standard of identity for margarine (§ 166.110 (21 CFR 166.110)) to remove the specified limits on the amounts of emulsifiers that may be used. FDA also proposed to delete two types of emulsifiers, mono- and diglycerides of fatty acids esterified with citric acid and with tartaric acid, which were inadvertently listed in the standard when it was revised in consideration of the Codex standard (38 FR 25671, September 14, 1973). Section 166.110(b)(4) currently lists certain specific emulsifiers and the maximum use levels for each, but it also allows manufacturers the option of using other safe and suitable emulsifiers not listed in the standard. Interested persons were given until December 31, 1984, to submit comments. In the **Federal Register** of January 31, 1985 (50 FR 4525), the comment period was extended to January 30, 1985.

In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA proposed to withdraw a number of proposed rules that were published before December 31, 1985, including the October 30, 1984 (49 FR 43560) proposal, to amend the standard of identity for margarine. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA published the

final action on the August 28, 1991 proposal. In the final action, FDA stated that the agency expected to complete the rulemaking proceeding on the margarine standard. The agency consequently deferred a decision to withdraw the October 30, 1984 proposal. FDA is now continuing rulemaking procedures on the margarine standard by issuing this tentative final rule.

The NAMM petition was filed under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)), which required formal rulemaking in any action for the amendment of a food standard. However, in November 1990, the Nutrition Labeling and Education Act of 1990 was signed into law, and it removed food standard rulemaking proceedings, except for action for the amendment or repeal of food standards of identity for dairy products or maple syrup, from the formal rulemaking proceedings of section 701(e) of the act. Therefore, further action on the NAMM petition is subject to the informal, notice and comment rulemaking proceedings of section 701(a) of the act, and this tentative final rule is being published under those procedures. Because there was a full opportunity to comment on the proposal when it was published in 1984, the comment period on this tentative final rule will be 30 days.

II. Comments to Proposal

Two comments were received in response to the proposal. The first was in favor of the proposed amendment. The second comment, from NAMM, opposed the agency's proposed deletion from the margarine standard, of the emulsifiers mono- and diglycerides of fatty acids esterified with citric acid or with tartaric acid. NAMM stated that by deleting these two emulsifiers from the margarine standard, the agency was going beyond the NAMM petition. NAMM subsequently advised the agency, in a letter dated October 28, 1991, that it no longer opposed this aspect of FDA's proposed action.

The agency has tentatively concluded that it is reasonable to provide for the optional use of safe and suitable emulsifiers in margarine, and that doing so will promote honesty and fair dealing in the interest of consumers. The phrase "safe and suitable" is defined in 21 CFR 130.3(d). A safe and suitable ingredient is one that has been affirmed as generally recognized as safe (GRAS), has been approved as a food additive for its intended use, or has otherwise been authorized for such use in accordance with sections 201(s) and 409 of the act (21 U.S.C. 321(s) and 348)). A safe and suitable ingredient is also one that performs an appropriate function in the food and is used only in an amount sufficient to achieve its intended purpose in the food. For example, margarine may not contain more emulsifier than is necessary to prevent water leakage from the water-in-oil emulsion or to prevent spattering during frying. Margarine may not contain emulsifiers in quantities intended to have a functional effect other than an effect that is appropriate for margarine. Thus, margarine used in baked products may not contain levels of emulsifiers sufficient to retard the staling process in those products.

Accordingly, the agency is issuing a tentative final rule to amend the standard of identity for margarine as set forth below. Anyone wishing to petition for food additive approval or GRAS affirmation for mono- and diglycerides of fatty acids esterified either with citric acid or tartaric acid may do so following the procedure set out in 21 CFR 171.1 or 170.35, respectively.

III. Economic Impact

FDA has examined the economic implications of this tentative final rule to amend Part 166 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small business where feasible. Because no marginal costs are expected to be incurred, the agency finds that this tentative final rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA announced in the proposal its tentative determination that this action will not have a significant adverse impact on a substantial number of small businesses. The agency has not received any information that would alter this determination.

This tentative final rule will amend the margarine standard of identity by removing the list of permitted emulsifiers and the maximum use level restrictions for each, currently associated with the provision for the use of safe and suitable emulsifiers. The amendment will also delete two specific types of emulsifiers, mono- and diglycerides of fatty acids esterified with citric and with tartaric acid, which were inadvertently listed in the standard when it was revised based on the Codex standard for margarine. As revised, the standard will provide for the use of any safe and suitable emulsifier in margarine. No changes in formulations will be required because the emulsifiers which are being removed were not in use in margarine in this country, according to the comments from the margarine industry.

FDA considered several options. One option is to take no action, which would mean that manufacturers of margarine products would continue to produce products that conform to the existing standards regardless of the availability of new ingredients or technologies.

A second option is to amend the standard of identity for margarine as proposed, i.e., remove the list of permitted emulsifiers and the maximum use level restrictions for each from the standard and provide for safe and suitable emulsifiers. This action would increase flexibility in the selection of ingredients for margarine and would allow for innovation.

A third option is to remove the Federal food standard for margarine, but this action would allow each State to establish its own food standard which could inhibit interstate trade.

The benefits of this tentative final regulation are to allow manufacturers to take advantage of new ingredients and technologies and to develop a wider variety of margarine products with a broad range of physical characteristics. Consumers will benefit from increased product choices and potentially lower manufacturing costs. Increased flexibility (e.g., providing for safe and suitable emulsifiers and other ingredients and levels of use in the standards) also reduces the costs associated with updating the standards to keep current with technology.

Because firms will not be required to reformulate products or to change existing labels, FDA finds that there are now marginal costs of this proposed amendment of the standard of identity for margarine. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, FDA has also determined that this tentative final rule will not have a significant adverse impact on a substantial number of small businesses.

IV. Environmental Impact

As stated in the October 30, 1984, proposal, the agency determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. FDA has not received any new information or comments that would alter its previous determination.

V. Comments

Interested persons may, on or before August 31, 1992, submit to the Dockets Management Branch (HFA-305) (address above) written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 166

Food grades and standards, Food labeling, Margarine.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR Part 166 be amended as follows:

PART 166—MARGARINE

1. The authority citation for 21 CFR Part 166 continues to read as follows:

Authority: Secs. 201, 401, 403, 407, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 347, 348, 371, 376).

2. Section 166.110 is amended by revising the third sentence in the introductory text of paragraph (a) and paragraph (b)(4) to read as follows:

§ 166.110 Margarine.

(a) * * * Margarine contains only safe and suitable ingredients, as defined in § 130.3(d) of this chapter. * * *

* * * * *

(b) * * *

(4) Emulsifiers.

* * * * *

Dated: May 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18109 Filed 7-30-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[PS-17-91]

RIN 1545-AP67

Facilities and Services Excise Tax on Communications

AGENCY: Internal Revenue Service, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits written comments from the public about issues that the Internal Revenue Service should address in proposed regulations relating to the excise tax on amounts paid for communications services, sections 4251, 4252, 4253, and 4254 of the Internal Revenue Code of 1986. All material submitted will be available for public inspection and copying.

DATES: Written comments concerning any of the regulations should be submitted by September 29, 1992.

ADDRESSES: Written comments should be sent to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:CORP:T:R (PS-17-91), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernard H. Weberman, (202) 622-3163 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The current regulations relating to the excise tax on communications, 26 CFR 49.4251 *et seq.*, were last amended in 1964. Because the communications tax was continuously scheduled to expire from the time those regulations were published until the tax was made permanent by the Revenue Reconciliation Act of 1990, the regulations were not amended during that period.

Subsequent to publication of the 1964 regulations, the Excise Tax Reduction Act of 1965 amended the definitions of the three communications services subject to taxation, that is, local telephone service, toll telephone service, and teletypewriter exchange service. The 1965 Act also updated the definition of private communication service, which is excluded from the definition of local telephone service, eliminated the tax on telegraph service, added exemptions, and made other changes to the law. Further, since publication of the 1964 regulations, numerous communications services have been developed and marketed, the means of transmission have expanded, and the industry has been deregulated so that numerous domestic and foreign service providers are not in the market. In light of the above, a complete revision of the regulations is appropriate and consistent with the objective of reducing regulatory burden. Such a revision will assist taxpayers in understanding and complying with the communications tax by simplifying existing regulations and providing additional guidance to taxpayers needed for good business planning.

The Service requests comment on any matter deemed significant by a commentator. However, the Service is particularly interested in comments relating to the following:

(1) The impact of technological advances and service innovations on imposition of the tax; that is, a description of novel communications service and a discussion of whether they are "local telephone service," "toll telephone service," "teletypewriter exchange service," or "private communication service," as the case may be, under section 4252 of the Internal Revenue Code;

(2) Issues created by the expansion of transmission methods (for example, satellite signal, microwave signal, fiber optic line); and

(3) Areas in which clarification is needed as to who is the taxpayer and who is responsible to collect the tax.

Stuart Brown,

Associate Chief Counsel (Domestic).

[FR Doc. 92-18060 Filed 7-30-92; 8:45 am]

BILLING CODE 4830-01-M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 670, 671 and 672

Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement and Hearing Procedures

AGENCY: National Science Foundation (NSF).

ACTION: Notice of proposed rulemaking.

SUMMARY: NSF proposes to amend its regulations to add regulations governing waste management and disposal in Antarctica. These changes are designed to implement the provisions of the Antarctic Conservation Act that require the Director of NSF to promulgate regulations designating and governing the release of pollutants in Antarctica.

DATES: Comment must be received by September 29, 1992.

ADDRESSES: Comments should be sent to Miriam M. Leder, Assistant General Counsel, or Dr. Sidney Draggan, Environmental Officer, National Science Foundation, 1800 G Street, NW., room 501, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Miriam M. Leder at 202-357-9435.

SUPPLEMENTARY INFORMATION: The United States first established year-round scientific research stations in Antarctica in 1957-1958. At that time, the National Science Foundation (NSF) was responsible for the research component of the U.S. Antarctic

Program (USAP). Later, a Presidential Directive gave NSF overall management responsibility for the USAP, so that in addition to managing the research program NSF now also provides logistics and operations support through a civilian contractor and other government agencies (e.g., the Naval Support Force Antarctica and the U.S. Coast Guard).

The number of Antarctic researchers and support personnel has grown over the years, resulting in increased impacts on the Antarctic environment. Antarctic Treaty nations recognized the potential effect of such cumulative impacts, and adopted several Treaty recommendations addressing environmental issues. Congress also recognized the importance of protecting Antarctic flora and fauna, and, in 1978, enacted the Antarctic Conservation Act (ACA).

The ACA, among other things, specifically directs NSF to designate as pollutants substances liable to create hazards to human health, harm living resources, damage amenities, or interfere with other legitimate uses of Antarctica. It also directs NSF to specify actions which must, and actions which must not, be taken in order to prevent or control the discharge or other disposal of pollutants from any source within Antarctica.

In 1990, NSF formed the Antarctic Pollution Control Task Group whose purpose was to assist NSF in formulating the pollution control regulations required by the ACA. The Group consisted of representatives from government agencies, private industry and environmental groups. At about the same time, parties to the Antarctic Treaty began to meet to discuss, and eventually adopt, a Protocol on Environmental Protection to the Antarctic Treaty. The Protocol includes an Annex that mandates certain waste disposal and waste management practices.

This proposed rule is intended to implement the pollution control requirements of the ACA by establishing a comprehensive waste management scheme for Antarctic operations, consistent with the requirements of the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty. NSF believes that this approach will reduce the environmental impacts of USAP operations.

There has never been a comprehensive regulatory scheme in place to govern waste management and waste disposal in Antarctica, and this proposed rule is a starting point for NSF. As NSF gains experience in administering these regulations, it will be better able to identify deficiencies in its approach, gaps in coverage, need for greater specificity, and alternative methods for waste management and disposal. NSF plans to gather methods for waste management and disposal. NSF plans to gather baseline environmental data and conduct environmental monitoring so that better information is available on the environmental impacts of USAP operations. This information will help NSF to revise its waste management regulations appropriately. NSF fully anticipates amending and expanding its regulations over time, and will continue to examine U.S. domestic regulations and standards for guidance in this area.

Because of the logistical difficulties associated with Antarctic operations, programs which involve transportation of supplies and personnel into and out of Antarctica generally must be planned at least a year in advance. As a result, the effective date of the final regulations will be March 1, 1993. However, U.S. citizens, including USAP, are encouraged to comply with the regulations prior to that date to the extent such compliance is feasible.

Summary of Provisions

Subpart A—Introduction

The proposed rule applies to the Antarctic activities of all U.S. citizens and entities, including governmental entities. It bans the use of certain substances in Antarctica; requires a permit for the use or release of certain other substances (i.e., substances consisting of or containing chemicals listed by source, generic or chemical name in regulations issued under RCRA, CERCLA and the Clean Air Act, or other substances posing a real or potential substantial hazard to human health, living resources or the environment); and requires a permit for the release of any waste in Antarctica.

Subpart B—Prohibited Acts; Exceptions

It is unlawful for U.S. citizens and entities (including governmental entities) to use banned substances in Antarctica. It is also unlawful for them to use or release harmful pollutants, or to release wastes, except pursuant to permits granted by the Director of NSF. However, if activities are already authorized under a permit issued to another party (i.e., a master permit described below), or are permissible under other applicable legislation, no permit is required.

Subpart C—Permits

Permit applications must contain detailed information on the type and volume of expected releases of wastes and hazardous pollutants; arrangements for waste management, monitoring and personnel training; and contingency plans for controlling releases of harmful pollutants. Notices of the availability of permit applications will be published in the **Federal Register**, inviting the submission of comments by interested parties. NSF also intends to provide a copy of permit applications to the Administrator of EPA and to other interested government agencies for comment.

Permits will be conditioned upon compliance with applicable provisions of the Protocol, Antarctic Treaty, and regulations issued under the ACA, and with other conditions or restrictions that may be imposed by the Director of NSF The Director may modify, suspend or revoke a permit (i) to make it consistent with a change in applicable regulations, (ii) if a change in conditions makes the permit inconsistent with the purposes of the ACA or regulations promulgated thereunder, or (iii) if a term or condition of the permit or any regulation is violated. Permits with durations in excess of one year will be reviewed on a biannual basis to determine whether modification, suspension or revocation is appropriate.

Master permits may be issued which would cover activities undertaken under the auspices of a larger program or expedition. Individual participants will not need their own permits for activities that are contemplated by the master permit.

Subpart D—Waste Management

Prior to treatment or disposal, all waste must be stored in a manner that will prevent its dispersal into the environment. USAP hazardous waste is eventually removed from Antarctica on the annual supply ship that docks at McMurdo Station, but the ship arrives only once each year. As a result, transporting USAP hazardous waste must wait until a ship arrives. This may take in excess of one year. Transporting hazardous waste from other USAP stations to McMurdo Station also involves significant delays. The ship between Palmer and McMurdo Stations makes biannual trips, and transport of hazardous waste from South Pole Station to McMurdo Station takes place annually. As a result, the proposed rule provides for fairly long periods of time during which hazardous waste may be stored in Antarctica. However, it also imposes stringent requirements in connection with such storage, based, in large part, on EPA regulations governing

the temporary storage of hazardous waste.

Certain other categories of waste also must be removed from Antarctica for disposal. These include radioactive materials; electrical batteries; fuel; waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds; poly-vinyl chloride (PVC); polyurethane foam; rubber and lubricating oils; treated timbers and other products containing additives which can produce harmful emissions or releases; all other plastic wastes except low density polyethylene containers; solid non-combustible waste; damaged fuel drums; incinerator ash; and, to the maximum extent possible, liquid wastes other than sewage and domestic liquid wastes.

Sewage and domestic liquid wastes may be discharged into the sea under certain circumstances. Other combustible waste may be incinerated in incinerators which reduce harmful emissions or discharges to the maximum extent practicable. Open burning of wastes is prohibited at permanent stations, and will be phased out over a one-year period at all other locations.

USAP is required to categorize its waste stream; prepare and annually review waste management plans; prepare an inventory of locations of past activities; and clean up past and present waste disposal sites. It also intends to establish and maintain a materials and waste management manifest system.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

The Director of NSF will review the list of banned substances and designated pollutants annually, and, based on specified criteria, may propose the designation or redesignation of any substance as a designated pollutant or other waste. The Director may also propose the designation or redesignation of a substance as a banned substance if the Director determines that the substance poses a substantial immediate hazard to health or the environment, or if the Parties to the Protocol or the Treaty agree that such substance should be banned from use in Antarctica. Prior to any such designation or redesignation, notice of the proposed designation or redesignation will be published in the **Federal Register**, inviting submission by interested parties of written comments.

Subpart F—Cases of Emergency

The provisions of the proposed rule do not apply in cases of emergency relating to the safety of human life or of ships, aircraft or other equipment and facilities of high value, or the protection of the environment.

As required by the Antarctic Conservation Act, NSF consulted with the Department of State prior to preparing this notice.

This is not a major rule as defined by Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects

45 CFR Part 670

Antarctica.

45 CFR Part 671

Antarctica.

45 CFR Part 672

Administrative practice and procedure, Antarctica.

For the reasons set forth in the preamble, NSF proposes to amend 45 CFR Part 670, and to add 45 CFR parts 671 and 672 as follows:

1. The authority citation for part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended: Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. 45 CFR part 670, subpart K is redesignated as part 672, and §§ 670.50 through 670.72 are redesignated §§ 672.1 through 672.22. under the following authority:

Authority: 16 U.S.C. 2401 et seq.

Part 671 is added to read as follows:

PART 671—WASTE REGULATION

Subpart A—Introduction

Sec.

Subpart B—Prohibited Acts, Exceptions

Subpart C—Permits

Subpart D—Waste Management

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

Subpart F—Cases of Emergency

Authority: 16 U.S.C. 2405.

Subpart A—Introduction

§ 671.1 Purpose of regulations.

The purposes of these regulations are to protect the Antarctic environment and dependent and associated ecosystems, to preserve Antarctica's value as an area for the conduct of scientific research, and to implement the Antarctic Conservation Act of 1978, Public Law 95-541, consistent with the provisions of the Protocol on Environmental Protection to the Antarctic Treaty, signed in Madrid, Spain, on October 4, 1991.

§ 671.2 Scope.

These regulations apply to any U.S. citizen's use or release of a banned substance, harmful pollutant or waste in Antarctica.

§ 671.3 Definitions.

(a) *Definitions.* In this part:

"Act" means the Antarctic Conservation Act of 1978, Public Law 95-541, 92 Stat. 2048 (16 U.S.C. 2401 et seq.)

Antarctica means the area south of 60 degrees south latitude.

Banned substance means any polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, plastic chips or similar loose packing material, and any other substance designated as such under subpart E of this part.

Designated pollutant means any substance designated as such by the Director pursuant to subpart E of this part, and any pesticide, radioactive substance, or substance consisting of or containing any chemical listed by source, generic or chemical named at 40 CFR 61.01 table 116.4A, part 261 (subpart D), § 302.4, parts 355 and 370, but shall not include any banned substance.

Director means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

Harmful pollutant means any designated pollutant or any other substance which poses or may pose a substantial present or potential hazard to human health, living resources, marine life or the environment.

Hazardous waste means any waste consisting of or containing one or more designated pollutants.

Incinerate or "Incineration" means the processing of material by mechanisms that:

(1) Involve the control of combustion air and/or fuel so as to maintain adequate temperature for efficient combustion;

(2) Contain the combustion reaction in an enclosed device with sufficient residence time and mixing for complete processing; and

(3) Control emission of gaseous or particulate combustion products.

Master permit means a permit issued to a federal agency, or its agents or contractors, or any other entity, covering activities conducted in connection with USAP or other expedition activities.

NSF or "Foundation" means the National Science Foundation.

Open burning" means combustion of any material by means other than incineration.

Permit means a permit issued pursuant to subpart C of this part.

Private permit means any permit other than a master permit.

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty, signed by the United States in Madrid on October 4, 1991, and any and all Annexes thereto, as amended or supplemented from time to time.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, burying or disposing of a substance, whether intentionally or accidentally.

Station means McMurdo Station, Palmer Station, Amundsen-Scott South Pole Station and any other permanent USAP facility in Antarctica Designed to accommodate at least 50 persons.

Substance means any gas, liquid, or solid, or mixture thereof, including biological material.

Treaty means the Antarctic Treaty signed in Washington, DC, on December 1959.

United States means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territory of the Pacific Islands, including the Federated States of Micronesia and the Commonwealth of the Northern Mariana Islands.

United States Antarctic Program or *USAP* means the United States national program in Antarctica.

U.S. citizen means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; and any department agency or other instrumentality of the Federal government or of any State, and any officer, employee, or agency of such instrumentality.

Use means to use, generate or create a substance, or to import a substance into Antarctica.

Waste means any substance that will no longer be used for any useful purpose, and does not include substances to be recycled in Antarctica, or substances to be reused in a manner different than their initial use. Recycling includes, but is not limited to, the reuse, further use, reclamation or extraction of a waste through a process or activity that is separate from the process or activity that produced the waste.

(b) *Pollutants, generally.* All designated pollutants, harmful pollutants and waste shall be considered pollutants for purposes of the Antarctic Conservation Act.

Subpart B—Prohibited Acts, Exceptions

§ 671.4 Prohibited acts.

Unless one of the exceptions stated in § 671.5 is applicable, it is unlawful for any U.S. citizen to:

(a) Use or release any banned substance in Antarctica;

(b) Use or release any harmful pollutant in Antarctica, except pursuant to a permit issued by NSF under Subpart C of this Part;

(c) Release any waste in Antarctica, except pursuant to a permit issued by NSF under subpart C of this part; or

(d) Violate any term or condition of a permit issued by NSF under subpart C of this part, or any term or condition of any of the regulations issued under this Part.

§ 671.5 Exceptions.

(a) A permit shall not be required under this part for activities of U.S. citizens that are already authorized under a USAP permit or under a private permit issued to another party.

(b) A permit shall not be required for any use or release of harmful pollutants or waste permitted under the Act to Prevent Marine Pollution from Ships (33 U.S.C. 1901 et seq.), as amended.

Subpart C—Permits

§ 671.6 Applications for permits.

(a) *General content of permit applications.* Each application for a permit shall be dated and signed by the applicant, and shall include the following information:

(1) The applicant's name, address and telephone number, the business or institutional affiliation of the applicant, or the name, address and telephone number of the president, principal officer or managing partner of the applicant, as applicable;

(2) A description of the types, expected concentrations and volumes of wastes and harmful pollutants to be released in Antarctica; the nature and timing of such releases; arrangements for waste management, including, without limitation, plans for waste reduction, minimization, treatment and processing, storage, transportation and disposal; arrangements for training and educating personnel to comply with these waste management requirements and procedures, and arrangements for monitoring compliance; and other arrangements for minimizing and monitoring the environmental impacts of proposed operations and activities;

(3) A description of the types, expected concentrations and volumes of harmful pollutants to be used in Antarctica; the nature and timing of such uses; the method of storage of harmful pollutants; and a contingency plan for controlling releases in a manner designed to minimize any resulting hazards to health and the environment;

(4) The desired effective date and duration of the permit; and

(5) The following certification:

I certify that, to the best of my knowledge and belief, and based upon due inquiry, the information submitted in this application for a permit is complete and accurate. Any knowing or intentional false statement will subject me to the criminal penalties of 18 U.S.C. 1001.

(b) *Address to which application should be sent.* Each application shall be in writing, and sent to: Permits Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

(c) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as he determines is relevant to the processing and evaluation of the application.

(d) *Publication of permit applications.* The Director shall publish notice in the **Federal Register** of each application for a permit and the proposed conditions of its issuance (including duration). The notice shall invite the submission by interested parties, the Environmental Protection Agency and other federal agencies, within 30 days after the date of publication of notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

§ 671.7 General issuance criteria.

(a) Upon receipt of a complete and properly executed application for a permit, the Director will decide whether and on what conditions he will issue a permit. In making this decision, the Director will carefully consider any comments or suggestions received from interested parties, the Environmental Protection Agency and other federal agencies pursuant to § 671.6(d) and will determine whether the permit requested meets the objectives of the Act and the requirements of these regulations.

(b) Permits authorizing the use or release of harmful pollutants or wastes may be issued only if, based on all relevant available information, the Director determines that such use or release will not pose a substantial hazard to health or the environment.

§ 671.8 Permit administration.

(a) *Issuance of permits.* The Director may approve an application for a permit in whole or in part, and may condition such approval upon compliance with additional terms and conditions. Permits shall be issued in writing, shall be signed by the Director, shall specify duration, and shall contain such terms and conditions as may be established by the Director and as are consistent with the Act and this part.

(b) *Denial.* An applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall constitute amendments of the application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this part. Any application for modification of a permit that involves a material change beyond the terms originally requested will be subject to the same procedures as a new application.

(d) *Public notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the **Federal Register**, including the conditions of issuance or basis for denial, as appropriate.

§ 671.9 Conditions of permit.

(a) *Conditions.* All permits issued pursuant to subpart C of this part shall be conditioned upon compliance with the relevant provisions of the Treaty and Protocol, such specific conditions or restrictions as may be imposed by the Director under § 671.7, and the provisions of subpart D hereof.

(b) *Possession of permits.* Permits issued under this part, or copies of them, must be in the possession of persons to whom they are issued or their agents when conducting the authorized action. Any permit issued shall be shown to the Director or to any other person with enforcement authority upon request.

(c) *Reports.* Permit holders must provide the Director with written reports of:

(1) any accidental release of harmful pollutants or waste promptly after the occurrence of such release, and

(2) the identity and quantity of all harmful pollutants removed from Antarctica or otherwise disposed of, and the method of disposal. The Director may also require permit holders to file reports of activities conducted under their permits. Such reports shall be submitted to the Director not later than June 30 for the preceding 12 months.

§ 671.10 Review, Modification, Suspension, and Revocation.

(a) The Director may modify, suspend or revoke, in whole or in part, any permit issued under this part:

(1) In order to make the permit consistent with any change to any regulation in this part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the purposes of the Act and any regulation in this part; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) The Director shall review all unexpired permits issued under this part at least biannually to determine whether those permits should be modified, suspended or revoked as set forth in paragraph (a) of this section.

(c) Whenever the Director proposes any modifications, suspensions or revocations of a permit under this § 671.10, the permittee shall be afforded the opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(d) Notice of the modification, suspension, or revocation of any permit shall be published in the **Federal Register** within 10 days from the date of the Director's decision.

Subpart D—Waste Management

§ 671.11 Waste storage.

(a) Prior to the treatment, disposal or removal of any wastes pursuant to § 671.12, all wastes shall be contained, confined or stored in a manner that will prevent dispersal into the environment;

(b) All hazardous wastes generated at or transported to any USAP station may be temporarily stored at such station prior to the treatment, disposal or removal of any wastes pursuant to § 671.12, provided all such hazardous waste is stored in either closed containers or tanks labeled to indicate their contents and the beginning date of accumulation of such waste, and further provided the following conditions are satisfied:

(1) If hazardous wastes are generated at or transported to McMurdo Station, they may be temporarily stored at that station for a period not to exceed 15 months;

(2) If hazardous wastes are generated at or transported to South Pole Station, they may be temporarily stored at that station while awaiting transport to McMurdo Station, for a period not to exceed 15 months;

(3) If hazardous wastes are generated at or transported to Palmer Station, they may be temporarily stored at that station while awaiting transport to McMurdo Station, for a period not to exceed 28 months;

(4) Containers holding hazardous wastes must be:

(i) In good, non-leaking condition with sufficient structural integrity for the storage of hazardous waste,

(ii) Made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the containers to contain such waste is not impaired, and

(iii) Inspected at least weekly for leakage and deterioration;

(5) Tank systems used for storing hazardous wastes must be in good, non-leaking condition with sufficient structural integrity for the storing of hazardous wastes; and systems must be inspected weekly to detect corrosion or releases of waste and collect data from monitoring and leak detection equipment, to the extent available, to ensure that they are functioning properly.

Prior to the expiration of the 15 month period referred to in § 671.11(b)(i), all hazardous wastes shall be treated,

disposed of or removed from Antarctica in accordance with § 671.12.

(c) All hazardous wastes generated at a location other than a permanent station may be temporarily stored at such location for a period not to exceed 12 months, in closed, non-leaking containers marked to indicate their contents. Such containers must be in good condition and made of or lined with material which will not react with and is otherwise compatible with the hazardous waste stored therein so as not to impair the ability of the container to contain the waste. Prior to the expiration of the 12 month period referred to above, all such hazardous wastes shall be either,

(1) Treated or processed, disposed of or removed from Antarctia pursuant to § 671.12, or

(2) Removed to a permanent station and temporarily stored at that station in accordance with paragraph (b) of this section.

§ 671.12 Waste disposal.

(a) The following wastes shall be removed from Antarctica:

(1) Radioactive materials;

(2) Electrical batteries;

(3) Fuel (both liquid and solid);

(4) Waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;

(5) Poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products containing additives which can produce harmful emissions or releases;

(6) All other plastic wastes except low density polyethylene containers (such as bags for storing wastes) provided such containers are incinerated in accordance with paragraph (e) of this section;

(7) Solid, non-combustible wastes; and

(8) Damaged or non-usable fuel, oil and chemical drums.

Notwithstanding the foregoing, the obligations set forth in paragraphs (a)(7) and (8) of this section shall not apply if the removal of such wastes by any practicable option would cause greater adverse environmental impacts than would be caused by leaving them in their existing locations.

(b) All liquid wastes other than sewage and domestic liquid wastes and wastes referred in paragraph (a) of this section shall be removed from Antarctica to the maximum extent practicable.

(c) Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment, and provided that such discharge occurs, wherever practicable, where conditions exist for initial dilution and rapid dispersal, and further provided that large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration. The by-product of sewage treatment by biological processes may be disposed of into the sea provided such disposal does not adversely affect the local environment.

(d) Residues of introduced animal carcasses, laboratory culture of micro-organisms and plant pathogens, and introduced avian products must be removed from Antarctica unless incinerated, autoclaved or otherwise sterilized.

(e) Combustible wastes not removed from Antarctica other than wastes referred to in paragraph (a) of this section, shall be burnt in incinerators which reduce harmful emissions or discharges to the maximum extent practicable and the solid residue of such incineration shall be removed from Antarctica. Any emission or discharge standards and equipment guidelines which may be recommended by the Committee for Environmental Protection constituted or to be constituted pursuant to the Protocol or by the Scientific Committee on Antarctic Research shall be taken into account.

(f) Sewage and domestic liquid wastes and other liquid wastes not removed from Antarctica in accordance with other provisions of this section, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or grounded ice-sheet unless such wastes were generated by stations located inland on ice shelves or on the grounded ice-sheet. In such event, the wastes may be disposed of in deep ice pits if that is the only practicable option, provided the ice pits are not located on known ice-flow lines which terminate at ice-free land areas or in blue ice areas of high ablation.

(g) No wastes may be disposed of onto ice-free areas or into any fresh water system.

(h) Open burning of wastes is prohibited at all permanent stations, and shall be phased out at all other locations by March 1, 1994.

§ 671.13 Waste management for the USAP.

(a) In order to provide a basis for tracking USAP wastes, and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and logistic support, the USAP shall classify its wastes in one of the following categories:

(1) Sewage and domestic liquid wastes;

(2) Other liquid wastes and chemicals, including fuels and lubricants;

(3) Solid wastes to be combusted;

(4) Other solid wastes; and

(5) Radioactive materials.

(b) USAP shall prepare and annually review and update a waste management plan (including plans for waste reduction storage and disposal) specifying for each of its permanent stations, field camps and ships (other than small boats that are part of the operations of permanent stations or are otherwise taken into account in existing management plans for ships):

(1) Current and planned waste management arrangements, including final disposal;

(2) Current and planned arrangement for analyzing the environmental effects of waste and waste management;

(3) Other efforts to minimize environmental effects of wastes and waste management; and

(4) Programs for cleaning up existing waste disposal sites and abandoned work sites.

(c) USAP shall designate one or more waste management officials to develop and monitor waste management plans and ensure that members of expeditions receive training so as to limit the impact of their activities on the Antarctic environment, and to inform them of the requirements of the Protocol and of this Part.

(d) USAP shall, to the extent practicable, prepare an inventory of locations of past activities (i.e., traverses, fuel depots, field bases, crashed aircraft) so that such locations can be taken into account in planning future scientific, logistic and waste management programs.

(e) USAP shall clean up its past and present waste disposal sites on land and abandoned work sites, except that it shall not be required to:

(1) Remove any structure designated as a historic site or monument; or

(2) Remove any structure or waste in circumstances where the removal would result in greater adverse environmental impact than leaving the structure or waste in its existing location.

(f) USAP shall circulate waste management plans and inventories described in this section in accordance with the requirements of the Treaty and the Protocol.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

§ 671.14 Annual review.

The Director shall review the list of banned substances and designated pollutants at least annually, and may propose the designation or redesignation of any substance as a banned substance, designated pollutant or other waste, based on the following criteria:

(a) If the Director determines that a substance, including a designated pollutant, poses a substantial immediate hazard to health or the environment and such hazard cannot be eliminated through waste management practices or other methods, or if the Parties to the Protocol or Treaty agree that a substance should be banned from use in Antarctica, the Director may designate such substance a banned substance.

(b) If the Director determines that a substance poses a substantial present or potential hazard to health or the environment if improperly treated or processed, stored, transported, or disposed of, the Director may designate such substance a designated pollutant.

(c) If the Director determines that a substance previously designated a banned substance no longer displays the characteristics described in paragraph (a) of this section, the Director may remove such substance from the list of banned substances (to the extent consistent with the provisions of the Protocol), but if the Director determines that such substance has the characteristics described in paragraph (b) of this section, it shall be redesignated a designated pollutant.

(d) If the Director determines that a substance previously designated a designated pollutant no longer displays the characteristics described in paragraph (b) of this section, the Director may remove such substance from the list of designated pollutants.

(e) In making the determinations referred to in paragraphs (a) through (d) of this section, the Director shall take into account all relevant new information obtained through monitoring activities or otherwise.

§ 671.15 Publication of preliminary determination.

Prior to any designation or redesignation of substances pursuant to § 671.14 (including removal of such substances from lists of banned substances or designated pollutants), the Director shall publish notice in the **Federal Register** of any proposed designation or redesignation, including the basis therefor. The notice shall invite the submission by interested parties, the Environmental Protection Agency and other federal agencies, within 30 days after the date of publication of notice, of written data, comments, or views with respect to such action.

§ 671.16 Designation and redesignation of pollutants.

After review of any comments or suggestions received from interested parties, the Environmental Protection Agency and other federal agencies pursuant to § 671.15, the Director will make a final determination to designate and redesignate various substances as set forth above. Within 10 days after the date of such final determination, the Director shall publish notice of any action taken in the **Federal Register**.

Subpart F—Cases of Emergency

§ 671.17 Cases of emergency.

The provisions of this part shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or other equipment and facilities of high value, or the protection of the environment. Notice of any acts or omissions resulting from such emergency situations shall be reported promptly to the Director, who shall then notify the Treaty parties in accordance with the requirements of the Treaty and the Protocol.

Dated: July 27, 1992.

Charles H. Herz,

General Counsel, National Science Foundation.

[FR Doc. 92-18029 Filed 7-30-92; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920246-2168]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a preliminary notice of change in the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel, and in the maximum sustainable yield (MSY) for cobia, in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes: (1) For the Gulf migratory group of king mackerel, increases in TAC and allocations, and in the western area (off Texas) and central area (off Louisiana, Mississippi, and Alabama), removal of the three-fish alternative bag limit available for persons fishing from charter vessels; (2) for the Atlantic migratory group of king mackerel, a change in the daily bag limit applicable to the southern area (off Florida), from five per person to the limit applicable to Florida's waters, but not to exceed five per person; (3) for the Gulf migratory group of Spanish mackerel, a change in the daily bag limit applicable to (a) The eastern area (off Florida) from five per person to the limit applicable to Florida's waters, but not to exceed ten per person; and (b) the western area (off Texas) from three per person to the limit applicable to Texas' waters, but not to exceed ten per person; (4) for the Atlantic migratory group of Spanish mackerel, change in the daily bag limit applicable to the southern area (off Florida), from five per person to the limit applicable to Florida's waters, but not to exceed ten per person; and (5) for cobia, an increase in MSY from 1.0 to 2.2 million pounds (m. lb.). The intended effects are to protect the mackerels and cobia from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these species.

DATES: Written comments must be received on or before August 17, 1992.

ADDRESSES: Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with 50 CFR 642.27, the Councils appointed a stock assessment panel (panel) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the panel's 1992 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the

Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to the TAC, allocations, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year that begins July 1, 1992, the annual TAC for the Gulf migratory group of king mackerel be increased to 7.80 m. lbs. This recommended TAC is within the range of the acceptable biological catch chosen by the Councils. For the 1992/93 fishing year, the Councils recommended no changes in the TAC or allocations for the other mackerel groups. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC. The Gulf king mackerel commercial allocation is divided by fixed percentages into quotas for eastern and western zones. Under these percentages and the recommended TAC, allocations and quotas for the fishing year that commences July 1, 1992, would be as follows:

Species and percent	m. lbs.
Gulf King Mackerel-TAC	7.80
Recreational allocation (68)	5.30
Commercial allocation (32)	2.50
Eastern zone (69)	(1.73)
Western zone (31)	(0.77)

The recreational fishery is regulated by both allocations and bag limits. For Gulf group king mackerel, the Councils recommended a uniform daily bag limit of two fish per person. The alternative daily bag limit, currently available for persons fishing from charter vessels in the western area (off Texas) and in the central area (off Louisiana, Mississippi, and Alabama), of three per person, excluding operator and crew, or two per person, including operator and crew, would be removed. The three-fish option for persons fishing from charter vessels in the eastern area (off Florida) was previously removed.

The Councils' intent in removing the three-fish option was to further reduce recreational fishing mortality and, thereby, address persistent problems caused by early reduction to zero of the bag limits in the Gulf king mackerel recreational fishery. In four of the last five fishing years the recreational allocation was reached and zero bag limits were implemented in December or January, negatively impacting important winter and spring recreational fisheries. Previous analyses indicate that elimination of the three-fish charter vessel option could moderately reduce catch and prolong recreational harvest. The Councils believe that the elimination of this option in the western and central areas, in combination with the increased TAC and recreational allocation, should afford Gulf-wide benefits by allowing uninterrupted recreational harvest in the EEZ throughout the fishing year under the two-fish bag limit.

For Atlantic group king mackerel, the Councils recommended changing the daily bag limit in the southern area (off Florida) to the bag limit applicable in Florida's waters, but not to exceed five fish per person. The daily bag limit in Florida's waters is currently two king mackerel per person.

For Gulf group Spanish mackerel, the Councils recommended changing the daily bag limits in the eastern area (off Florida) and in the western area (off Texas) to the bag limits applicable in Florida's and Texas' waters, respectively, but not to exceed ten fish per person. The daily bag limit in Florida's waters is currently five Spanish mackerel per person but is proposed by the Florida Marine Fisheries Commission to be increased to ten effective January 1, 1993. The daily bag limit in Texas' waters is currently three Spanish mackerel per person but is scheduled to increase to seven effective September 1, 1992.

For Atlantic group Spanish mackerel, the Councils recommended changing the daily bag limit in the southern area (off Florida) to the bag limit applicable in Florida's waters, but not to exceed ten fish per person. The daily bag limit in Florida's waters is currently five Spanish mackerel per person but, as for Gulf group Spanish mackerel, is proposed to be increased to ten effective January 1, 1993.

These bag limit changes would foster compatibility and simplicity between Federal and state fishing regulations, to promote compliance and enforceability, and to facilitate the achievement of optimum yield.

Finally, an increase from 1.0 to 2.2 m. lbs. in MSY is recommended for cobia. The current MSY of 1.0 m. lbs. was based solely on commercial landings estimates. Combined commercial and recreational landings have remained stable at 2.2 m. lbs. for a period greater than one generation, thus indicating that 2.2 m. lbs. is a more appropriate MSY.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils recommended changes are published for comment.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of $100 million used as a guideline for a "major rule."

The Councils prepared a regulatory impact review (RIR) on this action. The conclusions of the RIR are summarized as follows: The increased allocations of Gulf group king mackerel are expected to generate additional benefits in ex-vessel revenues, consumer surplus, and charter vessel profits. The changes in the bag limits for Atlantic group king mackerel and Gulf and Atlantic groups of Spanish mackerel have potential for benefits to the recreational sectors if Florida and Texas raise their respective bag limits.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulations are not likely to result in reduction of gross revenues to participants in the industry. Accordingly, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 22, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), first sentence	1.84	2.50
(a)(1)(i)	1.27	1.73
(a)(1)(ii)	0.57	0.77
(b)(1)	3.91	5.30

3. In § 642.28, paragraphs (a)(1)(i) through (a)(1)(iv) and (a)(3) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a)* * *

(1)* * *

(i) *King mackerel Gulf migratory group.* Possessing two king mackerel per person per day.

(ii) *King mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing five king mackeral per person per day.

(B) *Southern area.* Possessing the limit specified by Florida, in Rule 46–12.004, Rules of the Department of Natural Resources, Florida marine Fisheries Commission, Florida Administrative Code, but not to exceed five king mackeral per person per day.

(iii) *Spanish mackeral Gulf migratory group.*

(A) *Eastern area.* Possessing the limit specified by Florida, in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten Spanish mackerel per person per day.

(B) *Center area.* Possessing ten Spanish mackerel per person per day.

(C) *Western area.* Possessing the limit specified by Texas, in Rule 31–65.72, Texas Administrative Code, But not to exceed ten Spanish mackerel per person per day.

(iv) *Spanish mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing ten Spanish mackerel per person per day.

(B) *Southern area.* Possessing the limit specified by Florida, in Rule 46-23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten Spanish mackerel per person per day.

* * * * *

(3) *Areas.* For the purposes of paragraph (a)(1) of this section,

(i) The boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ;

(ii) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ (identical to the boundary between the eastern and western zones in the commercial fishery); and

(iii) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at 29°32.1' N. latitude, 93°47.7' W. longitude to point B (on the outer limit of the EEZ) at 26°11.4' N. latitude, 92°53' W. longitude.

* * * * *

[FR Doc. 92–18126 Filed 7–30–92; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 685

[Docket No. 920538–2138]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS requests public comment on a proposed rule recommended by the Western Pacific Fishery Management Council to reduce seasonally (October through January) the longline fishing area closures off the windward sides of the main Hawaiian Islands (MHI). This action will allow longline vessels to fish for bigeye tuna in waters around the MHI that are otherwise closed to longline fishing to prevent conflicts with troll and handline fishing vessels. This action is intended to reduce economic strain experienced by longline vessel operators as a result of the area closures without significantly increasing the risks of gear conflicts. It also may reduce the risk associated with longline vessels fishing far offshore in months with rough weather and dangerous ocean conditions.

DATES: Comments on the proposed rule must be received on or before August 31, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Mr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213.

Copies of the Environmental Assessment/Regulatory Impact Review establishing the original longline fishing area closures, and the supporting documentation for the proposed adjustment of the area closures, may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, 310–980–4034, Alvin Z. Katekaru, NMFS, 808–955–8831, or the Western Pacific Fishery Management Council at 808–541–1954.

SUPPLEMENTARY INFORMATION: Under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce (Secretary) approved an amendment to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) that established longline fishing area closures around the MHI implemented by final rule (57 FR 7661, March 4, 1992). This amendment made permanent longline area closures that had been first imposed by emergency rule effective June 14, 1991 (56 FR 28816, June 19, 1991); corrected by a notice published on July 11, 1991 (56 FR 31689); and extended for a second 90-day period by a notice on September 20, 1991 (56 FR 47701). The regulations now prohibit fishing for pelagic species with longline gear within 75 nautical miles (nm) of Kauai County (which includes the islands of Kauai, Niihau, and Kaula) and Honolulu County (which is the island of Oahu), and within 50 nm around Maui County (which includes the islands of Maui, Kahoolawe, Lanai, and Molokai) and Hawaii County (which is the island of Hawaii). The closures are intended to prevent conflicts between longline gear and troll and handline gear by precluding longline fishing in areas on which troll and handline fisheries have been dependent. Additional information on the basis for this action may be found in the Federal Register of June 19, 1991 (56 FR 28816). The amendment also established procedures for adjusting the longline area closures through a rulemaking process, if necessary, to meet the goals and objectives of the FMP (50 CFR 685.24).

Several months after the closures went into effect under the emergency rule, the Council began to receive letters and phone calls indicating the closures had serious adverse impacts on some longline fishermen, fish processors, and fish brokers. Fishermen indicated catches had decreased. Processors and brokers said the quality of certain types of fish being landed was lower because longline vessels, forced to fish farther from shore, had to carry their fish on board longer before delivering to port. Some longline fishery representatives indicated that a number of vessel operators ceased fishing because they either lacked the vessel capacity or the skill and experience to fish successfully in waters beyond the closed zones. These spokesmen indicated the area closures were larger than necessary to prevent gear conflicts among the longline, troll, and handline sectors and asked that the closures be reduced.

At its meeting December 16–18, 1991, the Western Pacific Fishery Management Council (Council) took additional testimony from the longline fishery and related industries and from spokespersons for the troll and handline fishery sectors. Longline and related

industry representatives repeated their requests for adjustment of the closures to relieve economic strains. Troll and handline representatives argued against any reduction in the area closures. They indicated their belief that the dramatic increase in longline catches in the preceding 3 years had resulted in decreased catches for troll and handline fishermen. They indicated many troll and handline fishermen were now fishing much farther from shore than in the past in pursuit of tuna and billfish, and the existing area closures were necessary to both prevent gear conflicts and minimize interception of fish by longliners so catches could be maintained by troll and handline fishermen. They indicated that longline vessels had the capability to travel much farther from shore than troll and handline vessels and would not be unfairly affected by the closures. They emphasized that the longline fleet had maintained landings at the same rate in 1991 as in 1990, which meant that the closures (which were in effect much of the year) had not adversely affected the longline fleet.

Presented with this testimony, the Council designated a special committee of fishermen and processors to determine if some modification could be negotiated between the user groups. The committee was charged with examining the available information and determining whether an adjustment in the size or timing of the closures would minimize the economic and social impacts to all user groups while effectively preventing physical gear conflicts. This committee was to report to the Council at its March 1992 meeting.

At its March 16–17, 1992, meeting, the Council again was presented with substantial testimony from all pelagic fishery sectors concerning whether to adjust the area closures. The select committee was unable to agree on a recommendation for the Council. The longline fishery representatives indicated a special concern about the need for access to traditional nearshore areas to fish for bigeye tuna during the late fall and winter months. Troll and longline fishery representatives took the position that a reduction in the area closures should be allowed only for a limited period of time and only if conditioned on requirements for automated vessel tracking system (VTS) equipment on longline vessels, observer coverage on longliners in the reduced area, and a bycatch limit on blue marlin.

The Council's Pelagics Plan Team did not take a firm position on the issue, but indicated that some of the data indicated that longline fishermen could benefit from a reduction in the closure. The Plan Team recommended that blue marlin bycatch limits not be set. The Council's Scientific and Statistical Committee stated that the data indicated that the current area closures were excessive if the sole purpose was to prevent gear conflicts.

After reviewing the available information and hearing the comments on all sides of the issue, the Council concluded that a change in the area closures on a seasonal basis was warranted to reduce adverse economic impacts on the longline fishery sector without a significant reduction in the effectiveness of the closures in preventing gear conflicts. The Council did not condition this adjustment on a VTS or observer requirement or a bycatch limit. However, the Council agreed to develop an amendment to require VTS equipment on all longline vessels by September 1993 and an amendment authorizing the Regional Director to place observers on longline vessels to collect scientific data on catch composition, especially the catch of blue marlin in the longline fishery. These amendments are under preparation. The Council also agreed to convene a workshop on blue marlin management, including the possibility of bycatch limits.

The information considered included data from NMFS and the Hawaii Division of Aquatic Resources (HDAR) on fishing patterns before and after the closures went into effect; seasonal differences in fishing patterns; and the 1990 and 1991 catches by the different sectors. The data are not conclusive concerning the need for or impacts of the area closures, but suggest the following. First, according to State data, just under 50 percent of all reported trips by longline vessels in the first half of 1990 were within the areas now closed to longline fishing. According to NMFS data, in the months from November 1990 through February 1991, 28 to 46 percent of all longline effort was deployed in the areas now closed to longline fishing. This strongly suggests that the nearshore areas were relatively important to longline fishermen in the winter months, when bigeye tuna are most likely available around the MHI.

Second, HDAR data reported by commercial small boat operators (troll and handline vessels) indicate that during the period January 1990 through December 1991, more than 96 percent of all trips occurred within 20 miles of shore. On a monthly basis, between 1.4 percent and 3.4 percent of all reported trips in the months of October 1990 through January 1991, and October 1991 through December 1991 occurred beyond 20 miles from shore. This strongly suggests that the offshore areas are not crucial to troll and handline vessel operators in the months in which the area closures would be reduced. The data do not indicate a substantial increase in trips beyond 20 miles from shore in the 2-year period for which reports are available.

Third, the data are inconclusive concerning the extent to which longline catches have an effect on troll and handline catches or on the stocks of fish being taken. Longline catches increased sharply from 1987 through 1991. Catches were higher in 1991 than in 1990, in spite of the area closures which were in effect around the MHI for 6 months. However, the number of landings and overall activity by the longline fleet dropped sharply after the closures went into effect. It appears that some vessel operators were unable to adjust to the area closures and ceased fishing. Either these vessels lacked the physical capability (including lack of navigation equipment) to operate far from shore or the operators lacked the experience to fish successfully far from shore.

Further, notwithstanding the claims by troll and handline vessel operators, it is not clear that troll and handline landings decreased as the longline landings increased. According to the most current HDAR data, total commercial small boat pelagic species landings increased by 11 percent in 1991. Landings increased for all species except yellowfin tuna. It is noteworthy that longline catches of yellowfin tuna also decreased in 1991 from the 1990 level.

Based on these data, the Council concluded that a seasonal reduction in the longline area closures on the windward sides of the MHI is warranted. This will relieve an economic burden for at least some longline vessel operators, while not increasing significantly the probability of gear conflicts among the principal gear types in the pelagics fishery around Hawaii.

Proposed Action

The Council recommended that the longline fishery area closures around the MHI be as follows:

1. From October 1 through January 31 of the following year, longline fishing would be prohibited within waters approximately 25 nm from the windward shore of Kauai County, Maui County, and Hawaii County, and 50 nm off the windward coast of Oahu; and within waters approximately 75 nm off the leeward coasts of Kauai County and

Oahu and 50 nm of Maui County and Hawaii. The distances are approximations; the U.S. Coast Guard and NMFS Enforcement staff have provided specific latitude and longitude coordinates to designate the closed areas with straight lines that approximate the 25, 50, and 75 nm boundaries. In some areas, the closure may be slightly more or less than the mileage indicated.

2. From February 1 through September 30 each year, longline fishing would be prohibited within waters approximately 75 nm from Kauai County and Oahu, and within 50 nm of Maui County and Hawaii. Again, specific latitude and longitude coordinates are set to facilitate enforcement.

The Secretary agrees that there is sufficient basis to proceed with publication of this proposed rule.

Classification

This proposed rule is published under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the western Pacific pelagics fishery and is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for the emergency action implementing the original area closures and prepared a supplemental EA for the FMP amendment that established the current areas closures and the process for adjusting the area closures through rulemaking. The EA and supplemental EA concluded that the closures would not have a significant impact on the marine or human environment and were the basis for a Finding of No Significant Impact. There is no new information that would result in a different conclusion at this time, and this action falls within the scope of the alternatives considered in the EA and supplemental EA. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216-6. Copies of the EA and supplemental EA are available from the Council (see **ADDRESSES**).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S. based enterprises. This conclusion is based on the analysis in the FMP amendment that established the current area closures and the supporting impact analysis for the Council's proposal, summarized in the following section.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This proposed rule will relieve an economic burden for a small segment (estimated at less than 10 percent) of the Hawaiian longline fleet that was more adversely affected than expected by the area closures that went into effect in 1991. The waters that would be open to longline fishing on a seasonal basis are important fishing grounds for these longliners which traditionally have fished for bigeye tuna in these waters and lack the capability and skills to fish farther from shore.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council's supporting documentation concludes that the proposed action would not affect any species listed under the Endangered Species Act, nor any critical habitat, in ways that differ from those evaluated in earlier documents. Biological Opinions and results of informal consultations under the Endangered Species Act pertaining to the pelagic fisheries in general, and the longline fishery in particular, have concluded that, with the conservation and management measures in effect under the FMP, the fisheries are not likely to jeopardize the continued existence of listed species or adversely modify any critical habitat. This proposed rule will not have any impacts that differ from those discussed in earlier documents. Therefore, NMFS has concluded that additional consultations are not necessary.

The Council determined that this proposed action is consistent to the maximum extent possible with the approved coastal management plan of the State of Hawaii. This initial determination has been submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is proposed to be amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the definitions of "Guam longline fishing prohibited area" and "Hawaii longline fishing prohibited area" are removed, the definition of "Regional Director" is revised, and a new definition of "Longline fishing prohibited area" is added, to read as follows:

§ 685.2 Definitions.

* * * * *

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specific in § 685.24(b), (c), and (d).

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, or a designee.

3. In § 685.5, paragraph (t) is revised to read as follows:

§ 685.5 Prohibitions.

* * * * *

(t) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 685.25.

4. Section 685.24 is redesignated § 685.26 and a new § 685.24 is added to read as follows:

§ 685.24 Longline fishing prohibited area management.

(a) Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in (b), (c), and (d) of this section.

(b) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by

straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	18°05' N	155°40'. W
B	18°20' N	156°25'. W
C	20°00' N	157°30' W.
D	20°40' N	161°40' W.
E	21°40' N	161°55' W.
F	23°00' N	161°30' W.
G	23°05' N	159°30' W.
H	22°55' N	157°30' W.
I	21°30' N	155°30' W.
J	19°50' N	153°50' W.
K	19°00' N	154°05' W.
A	18°05' N	155°40' W.

(c) From October 1, through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	18°05' N	155°40' W.
L	18°25' N	155°40' W.
M	19°00' N	154°45' W.
N	19°15' N	154°25' W.
O	19°40' N	154°20' W.
P	20°20' N	154°55' W.
Q	20°35' N	155°30' W.
R	21°00' N	155°35' W.
S	22°30' N	157°35' W.
T	22°40' N	159°35' W.
U	22°25' N	160°20' W.
V	21°55' N	160°55' W.
W	21°40' N	161°55' W.
E	21°40' N	161°55' W.
D	20°40' N	161°40' W.
C	20°00' N	157°30' W.
B	18°20' N	156°25' W.
A	18°05' N	155°40' W.

(d) The longlife fishing prohibited area around Guam shall be the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	14°25' N	144°00' E.
B	14°00' N	143°38' E.
C	13°41' N	144°33'30" E.
D	13°00' N	143°25'30" E.
E	12°20' N	143°37' E.
F	11°40' N	144°09' E.
G	12°00' N	145°00' E.
H	13°00' N	145°42' E.
I	13°27' N	145°51' E.

[FR Doc. 92-18128 Filed 7-30-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: ACTION.

ACTION: Information collection request submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction ACT (44 U.S.C. chapter 35), currently under review by OMB. ACTION is requesting an expedited review by OMB with final action by August 31, 1992 so that the approved form can be used to plan the first training conference beginning in the middle of November, 1992.

DATES: OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received on or before August 31, 1992.

ADDRESSES: Send comments to both—

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 30525, (202) 606–5245.

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Office of ACTION Issuing Proposal: Office of Policy Research and Evaluation/Program Analysis and Evaluation Division.

Title of Forms: ACTION Training Conference Needs Assessment.

Need and Use: ACTION's legislation requires it to provide technical assistance to agencies and non-profit organizations which utilize or desire to utilize volunteers in connection with carrying out the purpose of the Domestic Volunteer Service Act of 1973. Information gathered in this information collection will be used to plan nine training conferences for project directors of ACTION programs.

Type of Request: Reinstatement of a previously approved data collection for which approval has expired.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Once a year.

Estimated Number of Responses: 1,835.

Average Burden Hours per Response: 0.25 hours.

Estimated Annual Reporting or Disclosure Burden: 459 hours.

Regulatory Authority: 42 U.S.C. 4993.

Dated: July 27, 1992.

Mary Jane Maddox,

Acting Director, ACTION.

ACTION Training Conference Needs Assessment

Conducted by ACTION's Office of Policy Research and Evaluation Program Analysis and Evaluation Division

ACTION is preparing for its 1993 Regional Training Conferences. To help plan for these events, we want each of you, project directors and supervisors, to have the opportunity to express your needs and preferences. The advice you provide will help us shape training that meets your needs and contributes to the overall success of the conferences.

Please answer the questions on the following pages and return the questionnaire to us in the enclosed postage-paid envelope. It should take less than 15 minutes to complete the questionnaire.

Thank you for your cooperation in helping us plan for these conferences. If you have any questions regarding this form, contact David Rymph, Director, Program Analysis and Evaluation at the address listed below.

Please send this completed form within the next ten days to: ACTION, rm. 9100, 1100 Vermont Ave., NW., Washington, DC 20525.

We estimate that providing this information takes an average of 15 minutes, including the time for reviewing instructions, getting any needed data, and reviewing the requested information. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing time needed, to the Paperwork Reduction Project, OMB Clearance Number xxxx-xxxx, Office of Management and Budget, Washington, DC 20503

The Domestic Volunteer Service Act of 1973, Public Law 93–113, as amended, title I, part C, section 123, authorizes the solicitation of this information. Data collected in this study are covered by the Federal Privacy Act. All information you provide will be held in strictest confidence by ACTION. The purpose of this collection of information is to improve the training ACTION offers to its grantees and their project directors. Participation in this survey is voluntary. The information collected will be kept confidential and will not be released outside ACTION. No individual or organization will be identified in any report.

Upon request, ACTION may be able to provide alternative format versions of this questionnaire. Contact ACTION's Office of Policy Research and Evaluation, 1100 Vermont Ave., NW., Washington, DC 20525. Tel.: (202) 606–4821 or TDD: (202) 606–5256.

1. Please identify the ACTION programs you currently supervise. Check all that apply.

☐ VISTA ☐ FGP ☐ RSVP ☐ SCP

2. In what state is your project located? _____

3. How long have you been a supervisor/project director? _____years _____months

The following section is for VISTA supervisors only. FGP, RSVP and SCP project directors skip to number 5 on the next page.

4. If you are a VISTA supervisor, please read through the following list. Then select, by checking the appropriate boxes, up to twelve problem areas you would like to see addressed in your region's training conference.

• Recruitment & Development of VISTAs.
☐ Recruiting VISTA Volunteers.
☐ Orienting new volunteers (OJT).
☐ In-Service Training (IST).
☐ Career development techniques for Volunteers.
☐ Cultural diversity training.
☐ Accessing training resources in your community .
☐ Understanding adult training theory.
☐ Techniques for effective supervision.
• Resource Mobilization.
☐ Developing in-kind support.
☐ Developing a fund raising plan.
☐ Raising money in a poor community.
☐ Collaborating with other organizations.
☐ Recruitment and involvement of community volunteers.
• Program Emphasis Areas.
☐ Literacy.
☐ Housing/Homelessness.
☐ Economic/Job development
☐ Drug abuse.
☐ Hunger.
☐ Health.
☐ Rural programming.
• Volunteer Recognition.
☐ Recognition ideas.

☐ Using community resources for recognition.
• Evaluation.
☐ Evaluating project progress.
☐ Evaluating volunteer performance.
☐ Assisting advisory councils in designing evaluations.
• Public Relations.
☐ Developing a public awareness campaign.
☐ How to use the media.
☐ How to design and use newsletters.
☐ Public speaking techniques.
• Organization and Planning.
☐ How to do current year planning.
☐ How to do long range planning.
☐ How to form an Advisory Council.
☐ Maximizing Advisory Council resources.
☐ Writing a VISTA renewal application.
• Special Programming Needs.
☐ Project institutionalization.
☐ Successful placement of ARVs.
☐ Creating a positive climate for VISTA Volunteers.
☐ Conflict resolution.
☐ Local leadership development.
☐ Using computers.
☐ VISTA's interaction with sponsor advisory councils.
☐ Keeping VISTAs out of direct service.
☐ Collaborating with other ACTION programs and projects.

For other problem areas that are not listed here, see question 6 on the last page.

The following section is for FGP, RSVP and SCP project directors only. VISTA supervisors skip to number 6 on the next page.

5. If you are an OAVP director, please read through the following list. Then select, by checking the appropriate boxes, up to twelve problem areas you would like to see addressed in your region's training conference.

• Volunteer Recruitment/Placement
☐ Developing a recruitment plan.
☐ Determining appropriate target groups.
☐ Marketing strategies for recruitment.
☐ Interviewing and screening volunteers.
☐ Difficult to place volunteers.
☐ Utilizing retired, corporate and professionally skilled volunteers.
☐ Developing care plans and in-home agreements.
☐ Appropriate volunteer placements.
• Volunteer Training and Development
☐ Orientation for new volunteers.
☐ Training programs for volunteers.
☐ Designing in-service training.
☐ Accessing training resources in your community.
☐ Understanding adult training theory.
☐ Designing training for stations.
☐ Retiring the aging and fragile volunteer.
• Resource Mobilization
☐ Developing in-king support.
☐ Motivating others to help out.
☐ Developing a fund raising plan.
☐ Competing for local, limited resources.
☐ Building organization support for fundraising.
☐ Collaborating with other agencies and ACTION programs and projects.
• Project Management and Supervision
☐ Developing new volunteer stations.
☐ Delegation of authority and supervision.
☐ Using volunteers to help in administration.
☐ Effective records management.
☐ Meeting transportation needs.
☐ Monitoring volunteer stations.
• Volunteer Recognition
☐ Developing an ongoing recognition strategy.
☐ Increasing station recognition involvement.
☐ Using community resources for recognition.
• Evaluation
☐ Evaluating volunteer performance.
☐ Evaluating volunteer placements.
☐ Assisting advisory councils in developing evaluations.
☐ Evaluating station performance.
• Public Relations
☐ Developing a public awareness campaign.
☐ Public speaking techniques.
☐ How to use the media.
☐ How to design and use newsletters.
☐ Marketing for results.
• Organization and Planning
☐ How to do current year planning.
☐ How to do long range planning.
☐ Utilizing Advisory Council resources.
☐ The OAVP director as community leader and consultant.
☐ Writing an OAVP renewal application.
• Special Programming Needs
☐ Meeting emerging community needs with senior volunteers.
☐ Substance abuse.
☐ Conflict resolution.
☐ Creating a positive climate for volunteers.
☐ Using computers.
☐ Liability and volunteers.
☐ Liability and in-home services.
☐ Issues in rural programming.
☐ Working with your sponsor.

For other problem areas that are not listed here, see question 6 on the last page.

All supervisors and directors should complete the following questions

6. What other problem areas should be addressed at the conference?

7. Do you have specific expertise that you would be willing to share?

Yes ____ No ____ (If no, go to #7.)

If yes, please specify:

a. Content area (knowledge, technique, skill):

b. How do you propose to present it (workshop, panel discussion, lecture, etc.):

c: Your name and phone number so that we may contact you.

Name:_____

Address: _____

Phone: _____

8. What suggestions do you have that would make this a successful conference for you?

Thank you for your suggestions.

[FR Doc. 92-18141 Filed 7-30-92; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-121-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copies of this document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and

Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-191-01	U.S. Department of Agriculture, Agricultural Research Service.	07-09-92	Plum trees genetically engineered to express the coat protein gene from papaya ringspot virus (PRSV) for resistance to plum pox virus.	Jefferson County, WV.

Done in Washington, DC, this 28th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-18168 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption of Huck Timber Sale and Beechnut Timber Sale From Appeal, Malheur National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Huck Timber Sale and Beechnut Timber Sale, located on the Long Creek Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

DATES: Effective on issuance of the Decision Notice for the Huck Timber Sale, and Beechnut Timber Sale.

FOR FURTHER INFORMATION CONTACT: Mark A. Boche, Forest Supervisor, Malheur National Forest, 139 N. Dayton St., or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main St., John Day, Oregon 97845.

SUPPLEMENTARY INFORMATION: From 1990 to this year an infestation of western spruce budworms has been affecting major portions of the Malheur National Forest. Much of the infestation is in areas that support timber stands. In the Fall of 1990, an interdisciplinary team (IDT) surveyed much of the infested area to assess the damage to the resources that had occurred. Insect damage included damage to vegetation, soils, and water resources.

A District IDT identified the need to salvage the insect-killed trees in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 14 inches in diameter at breast height. Rapid drying of insect-killed trees is resulting in cracking or "checking," especially of the smaller diameter trees, which will quickly reduce the utility of sawlogs. It is also desirable to complete the logging quickly to begin artificial regeneration as soon as possible, establishing new stands more quickly.

The environment analysis of these actions began in December, 1990. After public meetings, and contacts with individuals and State and Federal agencies, the following major issues were identified: Diversity; recreation and other forest users; riparian and aquatic habitat; protection of watershed values; visual resource; old growth; and forest health.

The Huck IDT developed four alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 1,260 acres of heavily-infested land and produce about 9 MMBF of timber. Approximately 6 miles of specified roads and 3.7 miles of temporary roads would be constructed. This alternative protects and enhances riparian and aquatic habitat by implementing helicopter yarding of approximately 379 acres to reduce soil and riparian impacts. This alternative will also include a Forest Plan Amendment to allocate an old-growth replacement area further than ¼ mile of the dedicated old-growth area. The need for this is a result of an in-depth evaluation of the existing condition of timber stands surrounding the old-growth area. This stand could easily be managed to retain and promote old-growth characteristics better than stands adjacent to the dedicated stand.

The Oregon Department of Fish and Wildlife was consulted about the effects of this proposal on big game. They concurred with the proposal after minor modifications.

The Beechnut IDT developed four alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 96 acres of heavily infested land and produce about 1 MMBF of timber. Approximately 0.2 mile of temporary road would be constructed. This alternative protects and enhances riparian and aquatic habitat by implementing helicopter yarding of approximately 96 acres to reduce soil and riparian impacts. This alternative will also include a Forest Plan Amendment to implement timber management activities in a Sensitivity Level I foreground corridor of U.S. Highway 395. The need for this is result of an in-depth evaluation of the existing Forest Health condition of timber stands, and the development of a visual plan to meet the long-term desired condition for the corridor.

Biological evaluations have been completed for all plant, wildlife and fish Proposed, Endangered, Threatened and Sensitive species within both project areas. All Biological Evaluations indicated that projects could proceed as planned.

These salvage sales and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

This project will not be subject to review under 36 CFR part 217. Upon publication of this notice in the **Federal Register**, the Decision Notice for the Huck Timber Sale and Beechnut Timber Sale will be signed by the Forest Supervisor.

Dated: July 27, 1992.

John E. Lowe,

Regional Forester.

[FR Doc. 92-18111 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-11-M

Teratoid Tepee Resource Area, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber and build roads in the Teratoid Tepee Resource Area. The area is located approximately 27 air miles northeast of Coeur d'Alene, Idaho. Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai and Shoshone Counties, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and need for the proposed action are to:

(1) Treat areas infected by root disease and insect infestation;

(2) Improve age-class distribution in the area; and

(3) Contribute to the District's share of the Forests' Allowable Sale Quantity.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Identification of additional reasonable alternatives.

5. Identification of potential environmental effects of the alternatives.

6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of publication in the **Federal Register**. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 765-7381.

SUPPLEMENTARY INFORMATION: The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Consists of lands designated for timber production. The goals are to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, wildlife habitat, dispersed recreation opportunities and visual quality.

Management Area 4: Consists of lands designated for timber production within big-game winter range. The goal is to manage big-game winter range to provide forage to support projected big-game habitat needs, through scheduled timber harvest and permanent forage areas;

Management Area 6: Consists of lands designated for management of big-game summer range, to provide sufficient habitat to support projected elk populations, and to provide for the long-term growth and production of wood products;

Management Area 9: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials.

Management Area 16: Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintainence of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue, and timber harvest and associated road building would be deferred. Other alternatives will examine the effects of timber harvest, varying in the volume harvested, silvicultural systems, and miles of road construction.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision, however, two periods of time are specifically identified for the receipt of comments: During the scoping process, and in the review of the Draft EIS (December, 1993).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

Meetings with area residents, organizations, and other agencies will be scheduled as needed.

The draft environmental impact statement (DEIS) is expected to be available for public review in December, 1993. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by April, 1994. The Forest Service will respond to the comments received in the FEIS. The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision

will be documented in a Record of Decision.

Dated: July 23, 1992.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92-18078 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-11-M

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma Intermountain Region, Southern Idaho, Utah, Nevada, and Western Wyoming Rocky Mountain Region, Colorado, Kansas, Nebraska, South Dakota, and Eastern Wyoming

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: A Notice of Intent was originally published in the **Federal Register**, Vol 57, No. 44, Thursday March 5, 1992, page 7907. A revised Notice of Intent was published in the **Federal Register**, Vol 57, No. 67, Tuesday April 7, 1992, page 11707. This revised notice is being issued to update information on the scope of the environmental impact statement and responsible officials. The Forest Service is proposing to develop a conservation strategy for Mexican spotted owl (*Strix occidentalis lucida*) and will prepare an environmental impact statement on the proposed strategy and alternatives. A conservation strategy is needed to ensure that continued existence of Mexican spotted owls is not jeopardized by management activities on National Forest Land. The conservation strategy will be implemented on national forests in Arizona, New Mexico, southern Colorado, and southern Utah by each Forest Supervisor as management activities are planned.

DATES: Due to the extensive scoping and public participation that has already occurred, the Regional Foresters have determined there is no need for additional scoping prior to the release of the draft environmental impact statement. However, written comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) will be accepted and will continue to be considered in preparation of a final environmental impact statement.

ADDRESSES: Send written comments to USDA Forest Service; Southwestern Region; 517 Gold Avenue, SW.; Albuquerque, NM 87102; ATTN: Director of Wildlife.

FOR FURTHER INFORMATION CONTACT: Contact Southwestern Region Wildlife Staff Unit, (505) 842-3261; Rocky Mountain Region Renewable Resources Staff Unit, (303) 236-9562; or Intermountain Region Wildlife Staff Unit, (801) 625-5666.

SUPPLEMENTARY INFORMATION: The Forest Service is planning to develop a conservation strategy for Mexican spotted owls (*Strix occidentalis lucida*).

Mexican spotted owls are presently being considered for listing as a threatened or endangered species. A conservation strategy is needed to conserve and manage owl habitat so that continued existence of the species is assured while providing management guidelines for carrying out other national forest multiple use activities within owl habitat. Management activities within owl habitat are presently being guided by interim guidelines.

The Regional Forester, Southwestern Region; Regional Forester, Rocky Mountain Region; and Regional Forester, Intermountain Region, will be the responsible officials and will decide on the conservation strategy to be implemented on the national forests in Arizona, New Mexico, soother Colorado, and southern Utah.

Preliminary issues are: Whether or not Mexican spotted owls are adequately protected under present guidelines and effects of the strategy on other wildlife, other multiple uses, local economies, and biodiversity. Tentative alternatives include continuing current guidelines, ecologically based strategy, and total prohibition of activity in owl habitat.

Many public comments have been received concerning Mexican spotted owl management over the last several years and form the backbone for coping activities for this process. No additional scoping activities are planned before the draft environmental impact statement is issued.

It is expected that the draft environmental impact statement will be available in the fall of 1992, and the final environmental impact statement will be available the winter of 1992/1993.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 US 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: July 22, 1992.

Jerry D. Bowser,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 92-18124 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-11-M

Plexus Bornite Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (56 FR 43903) on September 5, 1991, for a proposal to develop and operate a highly mechanized underground copper mine. The current title does not reflect the scope and purpose of this proposed analysis. The revised title of the EIS will be "The Bornite Project, an Underground Copper Mine."

The original NOI indicated that the mining proposal would not be in compliance with the direction in the 1990 Willamette National Forest Land and Resource Management Plan (Forest Plan). The NOI is revised to show that the proposed mine project will be in compliance with the Forest Plan.

William F. Funk, District Ranger was originally listed as the responsible official. The NOI is revised to show that Darrel L. Kenops, Forest Supervisor, is the responsible official for this EIS and decision.

Mike Hernandez was originally listed as the Project Coordinator. The NOI is

revised to show that Vince Puleo is the Project Coordinator and EIS team leader.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Vince Puleo EIS team leader. Detroit Ranger District, HC 73 Box 320, Mill City, Oregon 97360 telephone (503) 854–3366.

Dated: July 22, 1992.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 92–18112 Filed 7–30–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1991 Panel Wave 7.

Form Number(s): SIPP–11700, SIPP–11703, SIPP–11704, SIPP–11705(L).

Agency Approval Number: 0607–0702.

Type of Request: Revision of a currently approved collection.

Burden: 44,100 hours.

Number of Respondents: 29,400.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1991 Panel Wave 7 and the 1992 Panel Wave 4 are identical. They are the following: (1) Assets and Liabilities, (2) Retirement Expectations and Pension Plan Coverage, and (3) Real Estate Property and Vehicles. Wave 7 interviews will be conducted from February through May of 1993.

Affected Public: Individuals or households.

Frequency: Once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18135 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1992 Panel Wave 4.

Form Number(s): SIPP–12400, SIPP–12403, SIPP–12405(L), SIPP–11704C.

Agency Approval Number: 0607–0723.

Type of Request: Revision of a currently approved collection.

Burden: 63,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1992 Panel Wave 4 and the 1991 Panel Wave 7 are identical. They are the following: (1) Assets and Liabilities, (2) Retirement Expectations and Pension Plan Coverage, and (3) Real Estate Property and Vehicles. Wave 4 interviews will be conducted from February through May of 1993.

Affected Public: Individuals or households.

Frequency: Once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18134 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1993 Panel Core, Waves 1–8.

Form Number(s): SIPP–13001, SIPP–13100, SIPP–13003A.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census uses the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in–kind benefits. The SIPP is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The Wave 1 questionnaire contains the SIPP's core. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The 1993 Wave 1 questionnaire contains two topical modules, Recipiency History and Employment History. Wave 1

interviews will be conducted from February through May of 1993.

Affected Public: Individuals or households.

Frequency: Two times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18133 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Agriculture – Coverage Evaluation (Classification Error Survey).

Form Number(s): 92–A90.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 7,058 hours.

Number of Respondents: 18,500.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Census Bureau is conducting a program to evaluate the completeness and quality of the data collected in the 1992 Census of Agriculture. The coverage evaluation program is designed to measure errors in the census mail list (omissions and duplications) and in farm classification (farms classified as nonfarms and nonfarms classified as farms). This request is for OMB clearance of the Classification Error Survey will measure both types of classification errors and mail list duplication. Omissions on the census mail list are being determined through other means. The coverage evaluation program provides an independent check on the census results, as well as pertinent information for census data users on coverage and limitations of the census data. The program also aids the Census Bureau in identifying procedures associated with coverage errors that can provide the basis for improvements in the mail data collection and processing during the census.

Affected Public: Individuals or households, Farms.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18132 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Pollution Abatement Costs and Expenditures, and the Plant and Equipment Expenditures Survey – Supplement for Pollution Abatement.

Form Number(s): MA–200, PA–1.

Agency Approval Number: 0607–0176.

Type of Request: Revision of a currently approved collection.

Burden: 43,750 hours.

Number of Respondents: 17,500.

Avg Hours Per Response: Two and one half hours.

Needs and Uses: The Census Bureau uses Forms MA–200 (Survey of Pollution Abatement Costs and Expenditures) and PA–1 (Plant and Equipment Expenditures Survey – Supplement for Pollution Abatement) to measure private industry's cost to meet increasing Federal, state, and local regulations for controlling pollution. We use the MA–200 to collect data on capital expenditures and operating costs for pollution abatement in manufacturing plants; the PA–1 is for nonmanufacturing plants. The data from these forms are an essential source for monitoring the impact of environmental programs on the U.S. economy and the responsiveness to these programs. Revisions to the forms include formatting and presentation of the survey materials, addition of new items covering replacement of underground storage tanks and other environmental protection expenses, and the clarification of cost offsets.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18136 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Action Affecting Export Privileges; Rolando S. Franco

In the matter of: Rolando S. Franco with addresses at 195 Willett Avenue, South River, New Jersey 08882 and c/o Franco & Sons, 195 Willett Avenue, South River New Jersey 08882, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Rolando S. Franco (Franco) of its intention to initiate an administrative proceeding against him pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991)) (the Act),[1] and part 788 of

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), based on allegations that:

(1) On or about October 21, 1986, Franco, acting in his capacity as president and export manager of Rhemz International Corporation, exported U.S.-origin integrated circuits from the United States to Switzerland without the validated license required by § 772.1(b) of the Regulations, in violation of § 787.6 of the Regulations;

(2) On or about March 13, 1987, Franco, acting in his capacity as president and export manager of Rhemz International Corporation, attempted to export, from the United States to Switzerland, a U.S.-origin graphic processor board without the validated export license Franco knew or had reason to know was required by § 772.1(b) of the Regulations, in violation of § 787.3(b) and § 787.4(a) of the Regulations; and

(3) On or about March 14, 1987, Franco, acting in his capacity as president and export manager of Rhemz International Corporation, attempted to export, from the United States to Switzerland, a U.S.-origin graphic processor board without the validated export license Franco knew or had reason to know was required by § 772.1(b) of the Regulations, in violation of § 787.3(b) and § 787.4(a) of the Regulations;

The Department and Franco having entered into a Consent Agreement whereby the Department and Franco have agreed to settle this matter by Franco's paying to the Department a civil penalty in the amount of $5,000 and by Franco's export privileges being denied for five years; and

The terms of the Consent Agreement having been approved by me;

It is Therefore ordered,

First, a civil penalty in the amount of $5,000 is assessed against Franco. Payment of the civil penalty shall be made to the Department within 30 days of the date of this Order, in the manner specified in the attached instructions.

Second, Rolando S. Franco, with addresses at 195 Willett Avenue, South River, New Jersey 08882, and c/o Franco & Sons, 195 Willett Avenue, South River, New Jersey 08882, and all of his successors, assigns, officers, representatives, agents, and employees, shall, for a period of five years from the date of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Franco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public.

This Order is effective July 22, 1992.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

Entered this 22d day of July, 1992.

[FR Doc. 92–18015 Filed 7–30–92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

November 1992 Japan Official Development Assistance Conference in Tokyo

AGENCY: International Trade Administration, Commerce.

ACTION: Revision of dates to submit expressions of interest for the November Japan Official Development Assistance Conference.

On June 10, 1992, the Department of Commerce ("The Department") issued a **Federal Register** notice (57 FR 24595) inviting U.S. companies to participate in the Japan Official Development Assistance (ODA) Conference in Tokyo to convene November 9–11, 1992. This conference is a direct result of the President's January 1992 trip to Japan and is a follow-on to the two successful A.I.D.-Department of Commerce sponsored ODA conferences held in Orlando, Florida and San Francisco, California in May 1989. The Department has received an unexpected and overwhelming response to participate in the conference. Unfortunately, the physical space for the conference is limited. Therefore, it has become necessary to revise the dates through which we will accept expressions of interest. Expressions of interest for partial participation must be received by Friday, November 4, 1992 rather than the original date of September 25, 1992. In addition, registration materials must be received by September 18, 1992.

ADDRESSES: Expression of interest and registration materials should be addressed to Robert Lurensky, Office of Energy, Environment and Infrastructure, room 2015–B, HCHB, Department of Commerce, Washington, DC 20230. Telephone: (202) 377–4002. Facsimile: (202) 377–0316.

FOR FURTHER INFORMATION CONTACT: Elizabeth Johns, office of Japan, room 2318, HCHB, Department of Commerce, Washington, DC 20230. Telephone: (202) 377–4527. Facsimile: (202) 377–0469.

Dated: July 27, 1992.

Marjory E. Searing,

Deputy Assistant Secretary for Japan.

[FR Doc. 92-18137 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-DA-M

Minority Business Development Agency

[Project I.D. No. 06-10-93002-01]

Business Development Center Applications: Corpus Christi MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $268,867 in Federal funds. An audit fee of $4,607 has been added to the Federal amount. The total funding breakdown is as follows: $268,867 Federal and $47,447 non-Federal for a total of $316,314. The period of performance will be from December 1, 1992 to November 30, 1993. The MBDC will operate in the Corpus Christi, Texas geographic service area and a rural initiative comprised of thirteen (13) counties (Jim Wells, Duval, Bee, Brooks, Aransas, Kleberg, Refugio, Live Oak, Kenady, Goliad, Victoria, Calhoun, McMullen).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

The Rural initiative's scope of work will be a proration of the MBDC's scope of work. However, the applicant must include a detail plan of action delineating how services will be provided to the specified rural area. Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A-129, "Managing Federal Credit Program," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-fee workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD-511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

Closing Date: The closing date for applications is August 31, 1992. Applications must be postmarked on or before August 31, 1992.

Note: Please mail completed application to the following address: Chicago Regional Office, 55 E. Monroe St., Suite 1440, Chicago, Illinois 60603.

FOR APPLICATION KIT OR OTHER INFORMATION CONTRACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767-8001.

Requests for application kit must be in writing.

A pre-bid conference will be held at 10 a.m., August 13, 1992, at Coastal Bend Council of Governments on 2910 Leopard Street, Corpus Christi, Texas.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable

regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 24, 1992.

William Fuller,

Deputy Regional Director, Dallas Regional Office.

[FR Doc. 92-18125 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Illinois River (Oregon) Winter Steelhead

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to list indigenous, naturally spawning Illinois River (Oregon) winter steelhead (*Oncorhynchus mykiss*) and to designate critical habitat under the Endangered Species Act of 1973 (ESA). In accordance with section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data regarding this action.

DATES: Comments and information must be received by October 29, 1992.

ADDRESSES: Comments should be submitted to Merritt Tuttle, Chief, Environmental and Technical Services Division, NMFS, 911 NE. 11th Avenue, room 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR 97232 (503/230-5430) or Patricia Montanio, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife (List) and to designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary determines whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS interprets "substantial scientific or commercial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted (50 CFR 424.14(b)).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Critical Habitat

Section 4(a)(3) of the ESA requires that critical habitat normally be designated concurrently with a determination that a species is endangered or threatened. Critical habitat includes (1) those areas currently occupied by a species that contain those physical and biological features essential to the conservation of the species and that may require special management considerations or protection; and (2) those areas outside the current range of the species that are essential for the conservation of the species. Areas outside the current range of a species can only be designated if a designation limited to the species' existing distribution would be inadequate to ensure its recovery. However, unlike designating a species as endangered or threatened, economic impacts must be considered when designating critical habitat. An area may be excluded from the designation if it is determined that the benefits of exclusion outweigh the benefits of including the area as critical habitat and the exclusion will not result in the extinction of the species (see 50 CFR 424.01, 424.12, and 424.19).

Petition Received

On May 6, 1992, the Secretary of Commerce received a petition from the Oregon Natural Resources Council; Siskiyou Regional Education Project; Federation of Fly Fishers; Kalmiopsis Audubon Society; Siskiyou Audubon Society; Klamath/Siskiyou Coalition; Headwaters; The Wilderness Society; North Coast Environmental Center; Oregon Chapter, The Sierra Club; and the National Wildlife Federation to list indigenous, naturally spawning Illinois River (Oregon) winter steelhead (*O. mykiss*), and to designate critical habitat under the ESA. The petitioners supplemented their petition on June 23, 1992. As required for a petition to list a Pacific salmon stock (May 18, 1992, 57 FR 21056), the petition presents information on and discusses whether the petitioned population qualifies as a "species" under the ESA, in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612). The Assistant Administrator for Fisheries, NOAA, has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted. Under section 4(b)(3)(B) of the ESA, this determination requires that a review of the status of the Illinois River winter run of *O. mykiss* be conducted to determine if the petitioned action is warranted.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the present and historic status of the Illinois River winter steelhead. NMFS is also soliciting information on whether or not this stock qualifies as a "species" under the ESA (November 20, 1991, 56 FR 58612). Copies of the petition are available from the **FOR FURTHER INFORMATION CONTACT** listed above.

NMFS is also requesting information on areas that may qualify as critical habitat for the Illinois River winter steelhead (see also Oct. 15, 1991, 56 FR 51684). Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should also be identified if such areas are essential to the recovery of the species. Essential features should also be identified. Essential features include but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

Economic Information Solicited

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements or management measures likely to result from the designation. Those responding to this request should first project specified areas as potential critical habitat for Illinois River winter steelhead and then project the economic consequences of designating those areas as critical habitat.

The economic cost to be considered in critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). Therefore, NMFS must consider the incremental net costs specifically resulting from a critical habitat designation, above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. As a consequence, although information estimating the total economic impact of listing a species is welcome, comments most useful in determining critical habitat must clearly distinguish the incremental costs directly attributable to the designation of specific areas as critical habitat.

NMFS reiterates that it seeks information from any interested party and requests that such data, information, and comments be accompanied by: (1) Supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications; and (2) the party's name, address, and any association, institution, or business that the party represents.

Dated: July 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92–18185 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Addition to Meeting Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda, previously published in the **Federal Register** at 57 FR 31176, on July 14, 1992, for a public meeting of the North Pacific Fishery Management Council (Council) at the Baranof Hotel in Juneau, Alaska, on August 4–5, 1992, is amended to add an additional item. All other information previously published remains unchanged. The addition to the agenda is as follows:

Addition to Agenda

Receive a report from the National Marine Fisheries Service on implementation of the 750 metric ton halibut prohibited species catch (PSC) for the longline fleet in the Bering Sea/Aleutian Islands. The Council may take action if appropriate.

For more information contact the, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18054 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team (Team) will hold a public meeting on July 30, 1992, beginning at 1 p.m. The meeting will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, room C–127, 8604 La Jolla Shores Drive, La Jolla, CA.

The purpose of this meeting is to: (1) Review the work in progress on limited entry; (2) discuss the work being done on the definition of overfishing and harvest guidelines; and (3) prepare for upcoming advisory subpanel and Pacific Fishery Management Council meetings.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Joe P. Clem.

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18053 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team (Team) will hold a public meeting on August 23, 1992, beginning at 1 p.m. The meeting will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, room C–127, 8604 La Jolla Shores Drive, La Jolla, CA.

The purpose of this meeting is to: (1) Review the work in progress on limited entry; (2) discuss the work being done on the definition of overfishing and harvest guidelines; (3) compile recommendations to the Pacific Fishery Management Council (Council); and (4) prepare for upcoming advisory subpanel and Council meetings.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Joe P. Clem,

Acting Director,Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18056 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Permit No. 792; U.S. Army Corps of Engineers (P504A).

On May 12, 1992, notice was published in the **Federal Register** (57 FR 20247) that an application had been filed by the U.S. Army Corps of Engineers (Corps), Walla Walla District, Walla Walla, WA 99362–9265, to take listed Snake River Sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purposes of scientific research and enhancement. An emergency permit allowing the requested activities for research on, and the enhancement of, Snake River chinook and sockeye salmon was issued on May 29, 1992. This emergency permit was in effect pending full public and governmental review of the application and is now superseded by issuance of this permit.

Notice is hereby given that on July 24, 1992, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the

above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503/230–5400).

Dated: July 24, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18062 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of Scientific Research Permit No. 748 (P77#50).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 729, issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, on April 30, 1991 (56 FR 21121), has been modified to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys.

This modification also grants authority for the addition of the following species to the list of cetaceans which may be sighted during the surveys, over the remaining two-year period that the Permit is valid: 100 Sei whales, *Balaenoptera borealis*; 100 Pygmy and dwarf sperm whales, *Kogia* spp.; 100 False killer whales, *Pseudorca crassidens*; 100 Striped dolphin, *Stenella coeruleoalba*; 100 Beaked whales, *Ziphius cavirostris* and *Mesoplodon* spp.

This modification became effective upon signature.

Documents pertaining to this Modification and Permit are available for review in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: July 23, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18061 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 791 (P771#63).

On May 7, 1992, notice was published in the **Federal Register** (57 FR 19608) that an application had been filed by the National Marine Mammal Laboratory, Alaska Fisheries Center, Northwest Region, 7600 Sand Point Way NE., BIN C15700—Building 1, Seattle, WA 98115–0070, National Marine Fisheries Service, to conduct aerial and vessel surveys for cetaceans, which will encompass observational, photo-ID and sound recording activities over a five-year period.

Notice is hereby given that on July 24, 1992 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070, (206/526–6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, 9109 Mendenhall Mall Road, suite 6, Federal Annex, Juneau, AK 99802 (907/586–7221).

Dated: July 24, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18064 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

July 27, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government agreed to increase the limit for Category 225 for the current agreement period only.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 21971, published on May 26, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1992 and extends through March 31, 1993.

Effective on August 3, 1992, you are directed to amend the May 19, 1992, directive to increase the limit for Category 225 to 8,389,140 square meters [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-18138 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after March 31, 1992.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 1, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 18869) of the proposed addition of the apron to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Apron, Disposable
8415-01-012-9164

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-18186 Filed 7-30-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48C) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Floorboard, Wood
2510–01–063–3893
Nonprofit Agency: Hardeman County Developmental Services Center, Bolivar, Tennessee
Clamp, Loop
5340–01–277–6184
5340–01–118–6677
5340–01–118–6696
5340–01–118–6697
5340–01–276–9169
5340–01–252–4644
5340–01–260–8990
5340–01–276–8539
5340–01–278–4043
5340–00–998–3164
Nonprofit Agency: United Cerebral Palsy Association of King-Snohomish Counties, Seattle, Washington
Bag, Dental Prosthesis
6520–00–926–9041
Nonprofit Agency: Wichita Industries and Services for the Blind, Wichita Kansas
Handle, Litter Pole, Wood
6530–01–247–7157
Nonprofit Agency: Arizona Industries for the Blind, Phoenix, Arizona
Plate, Paper, Pressed Board
7350–00–899–3054
7350–00–899–3055
7350–00–899–3056
Nonprofit Agency: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi
Box M16 Rifle
8149–00–X40–4785
(Requirements for the Anniston Army Depot, Alabama)
Nonprofit Agency: Helena Industries, Inc., Helena, Montana

Services

Audiocassette Reproduction
Fort Ord, California
Nonprofit Agency: Beacon Lighthouse, Inc., Wichita Falls, Texas
Janitorial/Custodial, Marine Corps Air Station Commissary, El Toro, California
Nonprofit Agency: Orange County Association for Retarded Citizens, Orange, California
Janitorial/Custodial, Paul G. Rogers Federal Building and Courthouse, 701 Clematis Street, West Palm Beach, Florida
Nonprofit Agency: Seagull Industries for the Disabled, Inc., Riviera Beach, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–18187 Filed 7–30–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List, Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons with severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from the designated nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following service to the Procurement List for provision by the designated nonprofit agency:

Janitorial/Custodial, Hanscom Air Force Base, Massachusetts
Nonprofit Agency: Morgan Memorial Goodwill Industries, Inc., Roxbury, Massachusetts

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–18188 Filed 7–30–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a wood pallet to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 29, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 22727) of the proposed addition of the pallet to the Procurement List. Comments were received from the current contractor for this pallet. The contractor stated that nonprofit agencies employing persons who are blind or have other severe disabilities should be required to compete for their Government contracts. The Committee believes that Congress would not have created the Committee's program, which designates nonprofit agencies in the program as mandatory sources for certain items the Government buys, if it intended these nonprofit agencies to receive Government contracts only through competitive bidding.

The contractor also questioned the Committee's method of assessing impact of proposed Procurement List additions on current contractors. The method mainly involves comparing the contractor's total annual sales with the

value of the contract proposed for addition to the Procurement List to determine what percentage of the contractor's sales the contract represents. Contractors may also inform the Committee of other factors which could bear on an impact determination.

The Committee has long used this method and considers it the fairest possible way of assessing impact in most situations. The contractor has not indicated what method the Committee should use other than to state that the dollar volume of contracts in this industry has little to do with profits. Accordingly, the Committee has used its standard method to reach its conclusion that addition of the pallet to the Procurement List would not have a severe adverse impact on this contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Pallet, Wood

3990–00–NSH–0069 40" x 48"

(Requirements for the Naval Supply Center, Pensacola, FL)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–18184 Filed 7–30–92; 8:45 am]

BILLING CODE 6820–33–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92–1–90CD]

Comments Regarding Distribution of 1990 Cable Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal has received requests for a partial distribution of the 1990 Cable Royalty Fund prior to the Final Declaration of Controversy in this matter.

The Tribunal requested comments by July 15, 1992, as to whether a controversy exists in the 1990 cable fund and for a notice of intent to participate. 57 FR 24026. Comments were received from all the parties who participated in the previous 1989 cable royalty distribution plus the British Broadcasting Corporation. While all indicated that a controversy exists, most comments indicated that some negotiations were underway and requested that the declaration of a controversy be deferred. These same parties requested, however, that the Tribunal distribute 90 percent of the 1990 royalties at the earliest possible date. The Tribunal, therefore, seeks comments regarding the proposed distribution of 90 percent of the 1990 cable royalty funds prior to the declaration of a controversy.

DATES: Comments are due August 14, 1992.

ADDRESS: An original and five copies shall be submitted to, Chairman, Copyright Royalty Tribunal, 1825 Connecticut Ave., NW., Suite #918, Washington, DC 20009, (202) 606–4400.

FOR FURTHER INFORMATION CONTACT: Commissioner J.C. Argetsinger, Copyright Royalty Tribunal, 1825 Connecticut Ave., NW., Suite #918, Washington, DC 20009, (202) 606–4400.

Dated: July 27, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92–18173 Filed 7–30–92; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Overseas Dependents Schools National Advisory Panel on the Education of Dependents With Disabilities

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Overseas Dependents Schools National Advisory Panel on the Education of Dependents with Disabilities (the Panel) has been renewed, effective July 23, 1992.

The Panel's charter has been amended to conform to the "Individuals with Disabilities Education Act Amendments of 1991," Public Law 102–119. The Panel provides advice and recommendations to the Director, Department of Defense Dependents Schools regarding the requirements for the education of dependent children with disabilities, as well as the rules and standards that should be developed and maintained for the operation of the schools system.

The membership of the Panel will continue to be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. Composition includes persons with disabilities, parents of persons with disabilities, special education teachers, regular education teachers, program administrators in the Dependents Schools system, and representatives of the military commands sponsoring the schools.

For additional information regarding the National Advisory Panel, please contact Ms. Trudy Pauls, telephone: 703–746–7867.

Dated: July 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18058 Filed 7–30–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense

Investigative Service, the Defense Security Assistance Agency, the Strategic Defense Initiative Organization, the Defense Field Activities, and the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Janet E. Thompson, Assistant Director for Executive personnel and Classification, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 697–8304.

Dated: July 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the OSD PRB; specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1992.

Chairman

Jeanne B. Fites

Members

Carolyn A. Carmack
Paul E. Chistolini
Gregory L. Colocotronis
Lee H. Frame
Anthony R. Grieco
Walter Jajko
Elaine F. Litman
Robert T. Mason
William M. McDonald
John H. McNeil
Michael G. Newman
Joseph V. Osterman
Roanlad S. OXley
Vincent P. Roske, Jr.
Roger F. Scheer
Mark B. Schneider
Robert R. Soule
Diana G. Tabler
Frank A. Tapparo
Nicolai Timeses, Jr.
Lindsey W. Williams

Alternates

Ronald L. Adolphi
Howard G. Becker
John V. Bolino
James M. Compton
Robert E. Doroxz
Robert A. Giacomo
Penman R. Gilliam
Thomas F. Granahan
Claiborne D. Haughton, Jr.
Sally K. Horn
Charles J. Infosino
H. Steven Kimmel
George G. Kundahl
Billy C. Murrell
Fred J. Newton
Jordan E. Rizer
Melvin W. Russell
Ronald P. Sanders
Eugene Sevin
Mary H.H. Smith
Roy C. Speight
John P. Springett
Michael A. Sterlacci
Christopher C. Wright

[FR Doc. 92–18123 Filed 7–30–92; 8:45 am]

BILLING CODE 3810–01–M

Meeting; Ada Board

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Federal Advisory Board for Ada (Ada Board) will be held Thursday and Friday, September 10 and 11, 1992 at Texas A&M University in College Station, TX.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland 20706, (703) 685–1477.

Dated: July 24, 1992.

L.M. Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 92–18057 Filed 7–30–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Institute of Advanced Science and Technology at the University of Pennsylvania, Philadelphia, PA

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of the construction of the Institute of Advanced Science and Technology (IAST) to be located at the University of Pennsylvania, Philadelphia, Pennsylvania.

In Fiscal Year 1991, Congress provided a ten million dollar grant to establish IAST. The grant was awarded to the University of Pennsylvania through competitive procedures. The IAST, a complex of interactive university facilities, would foster research in the areas of Computer and Cognitive Science, Chemistry and Chemical Engineering, and Bioengineering, in addition to training future scientists and engineers. It would also facilitate the transfer of research findings to practical applications. The proposal calls for the demolition of an existing campus structure designated as an historic property, the construction of 100,000 square feet of new laboratory space, and the adaptive reuse of adjacent University buildings for related purposes.

The Air Force will conduct a scoping meeting to obtain public input to assist in determining the nature, extent and scope of environmental issues and concerns to be addressed in the EIS. The scoping meeting will be held at the University of Pennsylvania on August 19, 1992 in the Wistar Auditorium, 3601 Spruce Street, Philadelphia, Pennsylvania.

Public input and comments are solicited concerning the environmental impacts of the proposed program. If concerned persons are not able to attend the scoping meeting, written comments and suggestions will be accepted. To ensure that the Air Force will have sufficient time to fully consider public inputs on issues to be included in the EIS, written comments should be forwarded to the address below by September 11, 1992. Interested persons who seek further information concerning the IAST project or wish to comment on the proposed action and EIS should contact: Lt. Col. Gary P. Baumgartel, AFCEE/ESE, Building 1155, Brooks AFB, Texas 78235–5000, (512) 536–3869.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–17320 Filed 7–30–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned

agreement involves approval of the following sale: Contract No. S–JA–439, for the sale of 593.6 grams of natural uranium, 20.013 grams of uranium enriched to 0.9911 percent in the isotope uranium-235, 30.019 grams of uranium enriched to 3.003 percent in the isotope uranium-235, 20.013 grams of uranium enriched to 4.949 in the isotope uranium-235, and 10.006 grams of uranium enriched 49.383 percent in the isotope uranium-235 to Nuclear Fuel Industries Ltd., Osaka, Japan for use as standards reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 28, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92–18178 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Proposed Finding of No Significant Impact, Consolidated Incineration Facility at the Savannah River Site, Aiken, SC; Public Comment Period Extension

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) has decided to extend the public review period on the proposed finding of no significant impact (FONSI) for the construction and operation of the Consolidated Incineration Facility (CIF) at the Savannah River Site (SRS) to August 31, 1992.

DATES: Comments on the proposed FONSI should be postmarked by August 31, 1992, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the EA should be addressed to: Stephen Wright, Director, Environmental and Laboratory Programs Division, Savannah River Field Office, U.S. Department of Energy, P.O. Box A, Aiken, South Carolina 29802. Telephone: (803) 725–3957. FAX: (803) 725–8434.

FOR FURTHER INFORMATION: For further information on the CIF project, contact Stephen Wright at the above address. For further information on DOE's general NEPA procedures, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On July 1, 1992, the DOE published a notice in the **Federal Register** (57 FR 29299) announcing the availability of the proposed FONSI and the CIF environmental assessment with a 30–day comment period. The DOE received requests from several parties to extend the comment period. In response to these requests, and to ensure that all interested parties have time to comment, the comment period has been extended to August 31, 1992. Comments should be postmarked by August 31, 1992, to ensure consideration.

Issued at Washington, DC., this 29th day of July, 1992.

Peter Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 92–18308 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Field Office (SR) Financial Assistance Award Intent To Award a Noncompetitive Cooperative Agreement

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive award of cooperative agreement.

SUMMARY: The DOE announces that it plans to award a renewal agreement to the South Carolina Institute of Archaeology and Anthropology (SCIAA), University of South Carolina, Columbia, South Carolina, for continuation of archaeological resource management, collections management, research, and public education at the Savannah River Site (SRS). The cooperative agreement will be extended for a five-year period with DOE support of $2,777,103; SCIAA will cost share $684,855 during the period. Pursuant to Section 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that the activity to be funded is necessary for the satisfactory completion of an activity presently being funded by DOE and eligibility for this award shall be limited to SCIAA.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

PROJECT SCOPE: Since 1987, SCIAA has conducted the Savannah River Archaeological Research Program on the SRS; the site serves as a primary research facility for the investigation of archaeological research and problems associated with cultural development within the Savannah River Valley. This renewal will allow SCIAA to continue to research, preserve, and educate the public on the cultural heritage of the Savannah River Site and surrounding environs. The research efforts will focus on the development and change of cultural systems in the area with special emphasis on the identification and preservation of significant archaeological sites which contain key data relevant to the understanding of the past. In addition, the research will enable archaeologists, historians, geographers and geologists to comply with relevant laws and regulations and manage the archaeological resources more effectively.

As an agency of the State of South Carolina and a research institute of the University of South Carolina, SCIAA is in a unique position to provide both expert technical services and an unbiased interpretation of the archaeological resources. It is in the best interest of the public to investigate and preserve these archaeological resources through effective and aggressive cultural resource management.

Issued in Aiken, South Carolina on July 17, 1992.

Robert E. Lynch,

Doe Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92–18183 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 92–2 of the Defense Nuclear Facilities Safety Board Concerning Facility Representative Programs at DOE Defense Nuclear Facilities

AGENCY: Department of Energy.

ACTION: Notice of request for public comment.

SUMMARY: Pursuant to section 312(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 92–2 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 4, 1992, (57 FR 23576) concerning Facility Representative programs at DOE defense nuclear facilities.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before August 31, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: William H. Young, Assistant Secretary for Nuclear Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued In Washington, DC, On July 27, 1992.

Mario Fiori,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

July 20, 1992.

Dear Mr. Conway: Your letter of May 28, 1992, forwarded the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 92–2 regarding the Department of Energy's (DOE) Facility Representative programs at defense nuclear facilities.

As you have noted, several DOE field offices have begun to develop site specific guidance on the selection, training and responsibilities of DOE Facility Representatives. When I approved the revised occurrence reporting order and the new direction for conduct of operations, I envisioned a Department-wide program that would help protect public health and safety at DOE's facilities. Your recommendation reinforces the need for the Department to continue to emphasize the need for well qualified facility representatives at its defense nuclear facilities. Due to the differences in facilities within the Department, however, some variance in Facility Representative requirements may prove to be appropriate. Additionally, some existing Facility Representative programs may prove to be currently in a state acceptable to the Department.

I accept the Board's recommendation. We will conduct an analysis of the existing DOE Facility Representative programs at defense nuclear facilities and use the results to either establish a more structured and formal Facility Representative program at these facilities, or to improve, if needed, those already performing well. I have tasked the Assistant Secretary for Nuclear Energy to develop an implementation plan for this recommendation by October 15, 1992.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 92–18182 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES92–48–000, et al.]

Old Dominion Electric Cooperative, et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Old Dominion Electric Cooperative

[Docket No. ES92–48–000]

July 23, 1992.

Take notice that on July 16, 1992, Old Dominion Electric Cooperative filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $125 million of short-term debt on or before September 15, 1994, with a final maturity date no later than September 15, 1995.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Cleveland Electric Illuminating Company

[Docket No. ER92–208–000]

July 24, 1992.

Take notice that on July 1, 1992, Cleveland Electric Illuminating Company (CEI) tendered for filing an amendment in the above-referenced docket.

Comment date: August 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Company

[Docket No. ER92–703–000]

July 24, 1992.

Take notice that on July 9, 1992, United Illuminating Company (UI) tendered for filing a Notice of Cancellation of the agreement, dated October 25, 1991 between UI and Green Mountain Power Corporation.

Comment date: August 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Westmoreland-Hadson Partners

[Docket No. QF92–180–000]

July 24, 1992.

On July 7, 1992, Westmoreland-Hadson Partners (Applicant), c/o Westmoreland Energy, Inc., 2955 Ivy Road, Charlottesville, Virginia 22901, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Weldon Township, near Roanoke Rapids, North Carolina, and will consist of a pulverized coal-fired boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for space heating and cooling, and process uses. The primary energy source will be coal. The maximum net electric power production capacity of the facility will be 44 MW. The facility is scheduled to begin in 1992.

Comment date: August 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18085 Filed 7–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District, Nebraska Public Power District; Corrected Notice of Intention To Prepare a Revised Draft Environmental Impact Statement [1]

July 24, 1992.

The Federal Energy Regulatory Commission (FERC) has received comments on the Draft Environmental Impact Statement (DEIS) on applications for relicensing the Kingsley Dam Project No. 1417, and the Keystone Dam Project No. 1835. The two hydropower projects are located on the North Platte, South Platte, and Platte Rivers in Nebraska.

[1] This notice was originally issued on July 22, 1992.

The FERC staff has reviewed the comments and determined that a revised DEIS will be prepared. The revised DEIS will address the substantial amount of new information filed subsequent to the preparation of the DEIS and broaden the treatment of alternatives analyzed.

Scoping Meetings

FERC staff will conduct scoping meetings in Nebraska to review the scope and the alternatives to be assessed in the revised DEIS. The place and time of these meetings will be announced in a subsequent notice.

Procedures

The purpose of the notice is to invite all interested individuals, organizations, tribes, and agencies to assist the staff in identifying the scope of environmental issues that should be analyzed in the revised DEIS. Anyone who has views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. The closing date for comments will be 30 days after the scoping meetings.

All comments must be filed with the Secretary, Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Kingsley Dam and Keystone Dam Projects, Nebraska, Project Nos. 1417 and 1835.

All persons with an interest in these proceedings, including the license applicants, intervenors, and governmental entities, are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission to serve a copy of the document on each person whose name is on the official service list for these proceedings. See 18 CFR 4.34(b).

For further information, please contact S. Ronald McKitrick at (202) 219-2783.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18084 Filed 7-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-605-000, et al.]

Sea Robin Pipeline Company, et al.; Natural Gas Certification Filing

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP92-605-000]

July 23, 1992.

Take notice that on July 21, 1992, Sea Robin Pipeline Company (Sea Robin), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed an application with the Commission in Docket No. CP92-605-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is open to public inspection.

Sea Robin proposes to abandon a transportation service performed under its FERC Rate Schedule X-6 for Southern.[1] Sea Robin is authorized to transport up to 21,038 Mcf of natural gas per day on a firm basis for Southern form Ship Shoal Block 225, Eugene Island Blocks 260 and 275, East Cameron Blocks 231, 232, and 239, and East Cameron South Addition Block 240, all offshore Louisiana, to a point onshore near Erath, Vermilion Parish, Louisiana. Southern has notified Sea Robin that it wishes to terminate the agreement when the primary term expires on February 12, 1993.

No facilities would be abandoned in this proposal.

Comment date: August 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP92-600-000]

July 23, 1992.

Take notice that on July 17, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158-0900, filed in Docket No. CP92-600-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the existing Bellingham I Meter Station metering facilities, to construct and operate upgraded replacement metering facilities at the Bellingham I Meter Station (Bellingham MS) and to construct and operate approximately 8-miles of pipeline to partially loop its existing Bellingham Lateral, under the authorization issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that the combined facilities will all be located in Whatcom County, Washington, and hereinafter referred to as the Bellingham Facilities. Northwest states that the additional capacity at the Bellingham Facilities will enable it and the receiving local distribution company, Cascade Natural Gas Corporation (Cascade), to accommodate requests for additional transportation service to Encogen Northwest, L.P. (Encogen) and other end-users served by Cascade.

Northwest states that Cascade has requested that Northwest increase its delivery capacity at the Bellingham MS to facilitate the transportation of additional gas which will be required to serve Encogen's cogeneration facilities and other new requirements. According to Northwest, Encogen is a limited partnership formed to construct, own and operate a natural gas fired, combined cycle 160 megawatt cogeneration facility located downstream of Bellingham MS which will require up to 37,000 MMBtu per day of natural gas.

Northwest proposes to abandon and replace the existing Bellingham MS with two 8-inch regulators, a new 8-inch by 10-inch relief valve, two 12-inch turbine meter runs and associated appurtenances. It is stated that this will increase the maximum design capacity of the Bellingham MS from approximately 38,000 Mcf per day (Mcfd) at a minimum delivery pressure of 300 psig to 85,900 Mcfd at a minimum delivery pressure of 400 psig. Further, to accommodate the increase capacity needed at the meter station, Northwest proposes to partially loop its existing 6-inch Bellingham Lateral with 8 miles of 12-inch pipe. It is stated that this will increase capacity on the Bellingham Lateral from 19,400 Mcfd at 600 psig to 100,000 Mcfd at 600 psig.

It is estimated that the total cost of the Bellingham Facilities, including filing fees and AFUDC, will be $3,255,600. Pursuant to the facilities reimbursement provisions of Northwest's Rate Schedule TF-1, Northwest states that it will install and pay for the Bellingham Facilities, since the estimated revenues generated from the incremental load projected to result from service through the new Bellingham Facilities exceeds the estimated incremental cost-of-service for the Bellingham Facilities.

Comment date: September 8, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-603-000]

July 23, 1992.

Take notice that on July 21, 1992, Transcontinental Gas Pipe Line

[1] *See* the Commission order issued April 5, 1974, in Docket No. CP73-162 (51 FPC 1221).

Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–603–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon three certificated interruptible transportation services for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco seeks authorization to abandon three interruptible transportation services which it indicates it has performed for Southern detailed as follows:

Transco's volume 2 tariff rate schedule	Certificate order date	Docket authorized	Primary term expiration
X–47	5–24–77	CP69–199	7–1–86
X–246	9–20–82 3–27–85	CP82–255	9–30–92
X–262	3–31–86	CP86–7	4–30–91

Transco states that it notified Southern by letter dated February 13, 1991, of its intent to terminate the service agreements underlying the listed rate schedules and to seek Commission authorization to abandon the services. Transco requests an order approving the abandonments effective September 30, 1992, for the service covered by Rate Schedule X–246 and on the date of the order for the services covered by Rate Schedules X–47 and X–262. No abandonment of facilities is proposed.

Comment date: August 13, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP92–599–000]

July 24, 1992.

Take notice that on July 17, 1992, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed a prior notice request with the Commission in Docket No. CP92–599–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a four-inch tap, meter station, and appurtenant facilities for Gulf Gas Utilities Company (Gulf Gas), under United's blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the application which is open to public inspection.

United proposes to construct and operate a four-inch tap, meter station, and a flow computer on its existing TPL 1 pipeline in Dallas County, Texas, in order to deliver 840 MMBtu of natural gas per peak day for Gulf Gas' account to the Veterans Administration Hospital. Gulf Gas would reimburse United for the $11,367 estimated construction cost of the delivery tap. United states that its tariff does not prohibit the proposed modification of facilities. United also states that it would make the appropriate part 284 transportation filings once Gulf Gas' gas volumes begin to flow.

Comment date: September 8, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Company

[Docket No. CP92–601–000]

July 24, 1992.

Take notice that on July 20, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP92–601–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to enhance and operate three existing meter stations for delivery of gas to an existing industrial customer, Indiana Gas Company, under the blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7(c) of the HGA, all as more fully set forth in the request which is open to public inspection.

ANR states that its proposal would have no adverse impact on the peak and annual entitlement of any other ANR customers. ANR also states that it would use the increased meter capacity to deliver open access transportation volumes pursuant to Rate Schedule FTS–1 of its FERC Gas Tariff.

Comment date: September 8, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP92–595–000]

July 24, 1992.

Take notice that on July 13, 1992, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP92–595–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis, for Rochester Gas and Electric Corporation (Rochester), a New York gas distribution company, and to construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In particular, Great Lakes states that Rochester has requested that Great Lakes transport up to 55,500 Mcf per day (Rochester volumes) from various points of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline), located at Capac, Farwell, and Muttonville, Michigan (respectively the Capac, Farwell, and Muttonville Receipt Points) to a point of interconnection between the facilities of Great Lakes and TransCanada Pipelines Limited (TransCanada) located on the international boundary, near St. Clair, Michigan (St. Clair Delivery Point).

The Rochester volumes received at the Capac, Farwell, and Muttonville Receipt Points would come from various domestic suppliers and from storage. Upon transportation and delivery by Great Lakes of the Rochester volumes to the St. Clair Delivery Point, TransCanada will transport the volumes through its facilities and those of Union Gas Limited (Union) and deliver the volumes to a proposed point of interconnection between the facilities of TransCanada and Empire State Pipeline (Empire), on the international boundary near Niagara Falls, New York. The gas will be transported by Empire to proposed points of interconnection between the facilities of Rochester and Empire.

To implement the arrangements, Great Lakes and Rochester have entered into a Transportation Service Agreement (Agreement) dated April 1, 1992. The agreement provides for a 14-year initial term for the firm service. To provide the service, Great Lakes proposes to construct and operate a 6.2 mile, 36-inch diameter pipeline loop in Genessee County Michigan. In addition, Great Lakes proposes to re-wheel two compressors and modify station piping, both at its Compressor Station No. 13, located in Genessee County, Michigan. The estimated cost of the proposed transmission facilities is $15,290,000. The facilities proposed in this application will be financed with funds generated internally, together with short-term borrowings under established lines of credit and/or issuance of commercial paper. It is contemplated that any short-term borrowings would be retired with funds generated internally.

The Agreement states that the reservation fee and utilization fee for the firm transportation rate will be $4.802 per Mcf and $0.00025 per Mcf respectively.

It is stated that the proposed transportation service will permit Rochester to reduce its purchased gas cost and diversify its system supply gas.

It is also stated that Rochester's customers would also benefit from use of storage services, which will increase the security and reliability of gas supply within Rochester's authorized service territories.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP92-604-000]

July 24, 1992.

Take notice that on July 21, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-604-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas with El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that by order issued August 9, 1979, in Docket No. CP79-114 (8 FERC ¶ 61,147), the Commission approved the exchange of up to 100,000 Mcf of natural gas per day, and the facilities necessary to make the exchange, pursuant to an exchange agreement dated November 30, 1978, between El Paso and WNG (formerly Cities Service Gas Company). WNG further states that the agreement is currently set out in WNG's FERC Gas Tariff Original Volume No. 2, as Rate Schedule X-15.

It is indicated that on January 6, 1986, WNG and El Paso received authority in Docket No. CP79-114-003 (34 FERC ¶ 62,013) to reduce the exchange volume from 100,000 Mcf per day to a volume not to exceed 35,000 Mcf per day and to change the unit of measure from an Mcf basis to a dekatherm basis.

WNG states that WNG and El Paso have mutually agreed to abandon the exchange agreement dated November 30, 1978, as amended, effective December 31, 1991. WNG further states that all exchange activity was suspended December 31, 1991, except for the elimination of any imbalance.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of the notice.

8. El Paso Natural Gas Company

[Docket No. CP92-607-000]

July 24, 1992.

Take notice that on July 22, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-607-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas with Williams Natural Gas Company (WNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that by order issued August 9, 1979, in Docket No.CP79-114 (8 FERC ¶ 61,147), the Commission approved the exchange of up to 100,000 Mcf of natural gas per day, and the facilities necessary to make the exchange, pursuant to an exchange agreement dated November 30, 1978, between El Paso and WNG (formerly Cities Service Gas Company). El Paso further states that the agreement is currently set out in El Paso's FERC Gas Tariff, Original Volume No. 2, as Rate Schedule X-51.

It is indicated that on January 6, 1986, WNG and El Paso received authority in Docket No. CP79-114-003 (34 FERC ¶ 62,013) to reduce the exchange volume from 100,000 Mcf per day to a volume not to exceed 35,000 Mcf per day and to change the unit of measure from an Mcf basis to a dekatherm basis.

El Paso states that WNG and El Paso have mutually agreed to abandon the exchange agreement dated November 30, 1978, as amended, effective December 31, 1991. El Paso further states that all exchange activity was suspended December 31, 1991, except for the elimination of any imbalance.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18083 Filed 7-30-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-054]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver to and Publishing of the Petition for Waiver From Evcon Industries, Inc; From the DOE Furnace Test Procedure

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Evcon Industries, Inc. (Evcon) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Evcon.

Evcon's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Evcon seeks to test using a blower delay time of 30 seconds for its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 31, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-054, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8757.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.37 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, any may be extended for an additional 180 days, if necessary.

On June 10, 1992, Evcon filed an Application for Interim Waiver regarding blower time delay. Evcon's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Evcon requests the allowance to test using a 30-second blower time delay when testing its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces. Evcon states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately one to two percent. Since current DOE test procedures do not address this variable blower time delay, Evcon asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 23392, June 3, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; The Ducane Company, 56 FR 63943, December 6, 1991; and Consolidated Industries Corp., 57 FR 22220, May 27, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Evcon an Interim Waiver for its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Evcon was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Tom Chase,

Senior Design Engineer, Evcon Industries, Inc., P.O. Box 19014, Wichita, KA 67204-9014.

July 24, 1992.

Dear Mr. Chase: This is in response to your June 10, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Evcon Industries, Inc. (Evcon) BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 23392, June 3, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; The Ducane Company, 56 FR 63943, December 6, 1991; and Consolidated Industries Corp., 57 FR 22220, May 27, 1992.

Evcon's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Evcon will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Evcon's Application for an Interim Waiver from the DOE test procedure for its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces regarding blower time delay is granted.

Evcon shall be permitted to test its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces on the basis of these test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−, unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Cyrus Nasseri,

Office of Conservation and Renewable Energy, U.S. Department of Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

June 10, 1992.

Dear Mr. Nasseri: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27. Waiver is requested from the furnace test procedure found in Appendix N to subpart B of part 430.

The current heat up test procedure requires a 1.5 minute delay between burner on and blower on. Evcon Industries is requesting authorization to use a 30 second time delay instead of 1.5 minutes. Evcon will be manufacturing a series of gas furnaces which include the BGU series upflow, BGH series horizontal and BGD series downflow models. These furnaces incorporate a non-adjustable electronic blower control which turns on the blower 30 seconds after the burner lights. When tested with the 30 second time delay, these furnaces show an increase of one to two percent AFUE compared to the current test procedure. Evcon believes that this is a worthwhile energy savings. Current test procedures do not give credit for the saved energy, thus providing inaccurate comparative data.

Evcon requests an interim waiver because it seems likely that our waiver will be granted. Similar waivers to allow fixed blower timings shorter than 1.5 minutes have been granted to several other manufacturers of similar products.

Confidential comparative test data which verify the results above are available upon your request.

A copy of this Petition for Waiver and Application for Interim Waiver is being sent to other manufacturers who domestically market similar products.

Sincerely,

Tom Chase,

Senior Design Engineer.

[FR Doc. 92–18180 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F–048]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures from Lennox Industries, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Lennox Industries, Inc. (Lennox) from the existing Department of Energy (DOE) test procedure for furnaces regarding blower time delay for the company's G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces.

Today's notice also publishes a "Petition for Waiver" from Lennox. Lennox's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Lennox seeks to test using a blower delay time of 60 seconds for its G21Q and GSR21Q series of condensing furnaces and a blower delay time of 45 seconds for its G21V and GSR21V series of condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 31, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–048, Mail Stop CE–90, room 6B–25, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8757.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary of Conservation and Renewable Energy (Assistant Secretary) to grant an interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basis model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On February 10, 1992, Lennox filed an Application or Interim Waiver regarding blower time delay. Lennox's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 60-second blower time delay when testing its G21Q and GSR21Q series and a 45-second blower time delay when testing its G21V and GSR21V series of condensing furnaces. Lennox states that the 60-second and 45-second delay are indicative of how these furnaces actually operate. Such delays result in energy savings of approximately 1.0 to 2.0 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 10166, March 24, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 10167, March 24, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, and 57 FR 10161, March 24, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Lennox an Interim Waiver for its G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Lennox was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. David W. Treadwell,

Vice President, Research and Development, Lennox Industries, Inc., P.O. Box 877, Carrollton, TX 75006.

July 24, 1992.

Dear Mr. Treadwell: This is in response to your February 10, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure for furnaces regarding blower time delay for Lennox Industries, Inc. (Lennox) G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 10166, March 24, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 10167, March 24, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 10167, March 24, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, and 57 FR 10161, March 24, 1992; Thermo Products Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992.

Lennox's Application for Interim Waiver does not provide sufficient information to

evaluate what, if any, economic impact or competitive disadvantage Lennox will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Lennox's Application for an Interim Waiver from the DOE test procedure for its G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces regarding blower time delay is granted. Lennox shall be permitted to test its G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

February 10, 1992.

Dear Sir: This is a Petition for Waiver and an Application for Interim Waiver submitted pursuant to 10 CFR 430.27. Waiver is requested from the uniform test procedure for measuring energy consumption of furnaces. The procedure requires a 1.5 minute time delay between burner ignition and indoor blower activation during the heat-up portion of the test as outlined in appendix N to supbart B of part 430. Lennox manufactures condensing units with fixed timing controls which will activate the blower in less than 1.5 minutes after burner start-up. Under the current method of test the flue gas temperature measured in the stack reaches a value which is higher than will be seen in actual operation resulting in inaccurate comparative data.

Based on the use of fixed timing controls, we are requesting that Lennox Industries Inc. be permitted to test the following lines of condensing units with the indicated time delays between burner and blower startup.

Model series	Time delay
G21Q & GSR21Q	60 seconds.
G21V & GSR21V	45 seconds.

Our test data indicates that an energy savings of approximately 1% to 2% is achievable with this reduction in blower delay. Lennox has been granted a waiver permitting a 45 second blower on time to be used in the efficiency calculations for our G20 and G20R atmospheric furnaces. Several other manufacturers of condensing furnaces have also been granted waivers which permit calculations based on a fixed timing control.

Manufacturers that market similar products are being sent a copy of this petition. If any other information is required, please contact me.

Sincerely, Lennox Industries Inc.

David W. Treadwell,

Vice President, Research and Development.

[FR Doc. 92–18179 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–75–NG]

MCV Gas Acquisition General Partnership; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 19, 1992, of an application filed by MCV Gas Acquisition General Partnership (MCV Gas), requesting blanket authorization to import up to 20 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. MCV Gas intends to use existing pipeline facilities within the United States and states that it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time August 31, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 586–0503.

SUPPLEMENTARY INFORMATION: MCV Gas is a general partnership organized under the laws of the State of Michigan and a marketer or natural gas with its principal place of business at Midland, Michigan. MCV Gas' general partners are Midland Cogeneration Venture Limited Partnership (Midland) and PVCO Corp. Midland operates a combined-cycle, natural gas-fired cogeneration facility in Midland, Michigan.

In support of its application, MCV asserts that the terms of each purchase of gas to be imported will be voluntarily negotiated, short-term and market responsive. In particular, MCV Gas asserts that the price of the gas will be adjusted to reflect the prices and availability of competing fuels, including domestic natural gas supplies.

The decision on MCV Gas application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an impori arrangement in the markets served is the

primary consideration determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental affects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments recieved from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MCV Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC July 27, 1992.

Charles F. Vacek

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18181 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–121–NG]

Western Gas Marketing Inc.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Western Gas Marketing Inc. (WGM Inc.) on December 31, 1991, as amended on January 21, 1992, May 28, 1992, and June 17, 1992 for authorization to import up to 600 Bcf of Canadian natural gas into the United States. In addition, WGM Inc. requests authorization to export to Mexico up to 50 Bcf of domestically produced natural gas and to export to Canada up to 100 Bcf of domestic natural gas. The term of the proposed import/export authorization would be for two years beginning on the date of first delivery after October 31, 1992, the date WGM Inc.'s existing blanket authorization to import and export gas expires. See DOE/FE Opinion and Order No. 442 (Order 442), (1 FE Para. 70,368), issued October 24, 1990, as amended by DOE/FE Opinion and Order No. 442–A (Order 442–A) issued February 28, 1992 (1 FE Para. 70,540).

The proposed imports and exports would take place at any point on the United States' international borders. WGM Inc. states it will notify DOE within two weeks after deliveries begin and will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 31, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: WGM Inc., and Oklahoma corporation with its principal place of business in Tulsa, Oklahoma, is a natural gas marketing company. Order 442 originally authorized Western Gas Marketing USA Ltd., (Western Gas USA) to import up to 300 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of domestic natural gas through October 31, 1992. This authority was transferred from Western Gas USA to WGM Inc. by Order 442–A to reflect the merger of Western Gas USA Ltd., and Allied Producers Gas Service Inc. (Allied). Under the authorization sought, WGM Inc. will import up to 600 Bcf of Canadian natural gas into the United States, additionally will export to Mexico up to 50 Bcf of domestically produced natural gas and to export to Canada up to 100 Bcf of domestic natural gas. WGM proposes to import or export natural gas either on its own behalf, or as agent on behalf of others,

for short-term and spot sales in the United States, Canada and Mexico. WGM Inc. asks that the import and export authorizations be granted without a daily or annual volume limitation.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these issues. The applicant asserts that this import/export arrangement would be competitive and there is no current need for the domestic gas proposed to be exported. Parties opposing this arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of WGM Inc.'s application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18177 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4190–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 31, 1992.

For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: FIFRA Reregistration Fees (EPA ICR No.: 1495.02; OMB #2070–0101). This is a reinstatement of a previously approved collection. The EPA is requesting a one year clearance.

Abstract: Under the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide registrants must pay a one-time fee to cover the costs of reregistering the active ingredients in their products. To determine the amount of this fee, EPA will ask registrants to indicate the source of the active ingredient in their products and the quantity marketed. The Agency uses this information to apportion fees based on market share and, in some cases, to decide whether a pesticide producer is exempt from the fee requirement. Small businesses may apply for a waiver of fees by completing a certification form.

Burden Statement: The burden for this collection of information is estimated to average 3.29 hours per response for reporting, and 0.28 hour per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Producers.

Estimated No. of Respondents: 250.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 893 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street SW., Washington, DC 20460,

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 27, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-18158 Filed 7-30-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4190-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 13, 1992 Through July 17, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-AFS-G65054-NM Rating LO, Hay Timber Sale, Timber Harvest and Road Construction, Implementation, Lincoln National Forest, Cloudcroft District, Otero County, NM.

Summary

EPA had no objection to the preferred alternative.

ERP No. D-BIA-L99003-WA Rating EO2, I-5/88th Street Northeast Interchange Construction Project, Traffic Circulation Improvements and Tulalip Tribes Reservation Direct Freeway Access, Approval, Coast Guard Bridge Permit and COE Section 404 Permit, Snohomish County, WA.

Summary

EPA expressed environmental objections on the potential indirect effects of the project which may include noise, air quality degradation, water quality, and aesthetics. EPA further believed that the project had the potential to alter land use, increase development density, increase growth rates, and significantly increase traffic movements. EPA believed that additional information is needed on these effects and mitigation measures.

ERP No. DS-USN-K35030-CA Rating EO2, P-202 Naval Air Station Alameda and P-082 Naval Supply Center Oakland Dredging Projects, Additional Information, Site Designation, Implementation and Section 404 Permit, Alameda and Oakland Cities, San Francisco Bay, CA.

Summary

EPA expressed environmental objections because disposal alternatives for dredged material that may be unacceptable for ocean disposal were not considered. EPA believed that additional 10-day amphipod bioassays are needed before a final decision on suitability of the dredged material can be made, and that a detailed management and monitoring plan should be developed.

Final EISs

ERP No. F-AFS-K61120-AZ Mt. Lemmon Ski Valley Area, Development and Management, Special Use Permit, Coronado National Forest, Santa Catalina Ranger District, Pima County, AZ.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F-VAD-E80000-FL East Central Florida Medical Center (ECFMC) Construction, Alternative Site Selection, Brevard, Orange, Seminole and Volusia, Counties, FL.

Summary

EPA expressed environmental concerns about potential water quality impacts due to stormwater runoff, and ambient noise impacts.

Dated: July 27, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-18160 Filed 7-30-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4190-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed July 24, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920293, DRAFT EIS, AFS/NPS AZ, Grand Canyon Airport to Maswik Transportation Area, Grand Canyon Village Passenger Rail Service Construction and Operation, Approval and Special Use Permit, Coconino County, AZ, Due: September 20, 1991, Contact: William M. Lannaw (602) 635-2681. The U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's National Park Service are Joint Lead Agencies on this project.

EIS No. 920294, DRAFT EIS, FHW, CA, CA-126 Extension, I-5 to CA-14, Funding and Possible COE Section 404 Permit, City of Santa Clareta, Los Angeles County, CA, Due: September 14, 1992, Contact: Jim Bednar (916) 551-1310.

EIS No. 920295, FINAL EIS, FHW, IN, US 231/Wabash River Crossing Relocation and Construction, Country Road 350S to West Lafayette, Funding and COE Section 404 Permit, Wabash River, Tippecanoe County, IN, Due: August 31, 1992, Contact: James E. Threlkeld (317) 269-7481.

EIS No. 920296, FINAL EIS, AFS, UT, Deep Creek and Snow Bench Timber Sales, Approval and Implementation, Thousand Lake Mountain, Fishlake National Forest, Loa Ranger District, Wayne County, UT, Due: September 01, 1992, Contact: Gary O. Laing (801) 896-9233.

EIS No. 920297, DRAFT EIS, USA, MD, Aberdeen Proving Ground Research Laboratory Facility Realignment for Army Research and Technology Functions, Construction and Operation, Harford County, MD, Due: September 14, 1992, Contact: John Butler (410) 962-4937.

EIS No. 920298, FINAL EIS, AFS, WA, Leola Sullivan Timber Sale, Implementation, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA, Due: August 31, 1992, Contact: Andrew C. Mason (509) 446-7500.

EIS No. 920299, DRAFT EIS, BLM, Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste, Construction and Operation, Right-of-Way Grants, Mineral Material Sales Permits and COE Section 404 Permit, San Bernardino County, CA, Due: September 30, 1992, Contact: Sharon Paris (619) 256-3591.

EIS No. 920300, FINAL EIS, NPS, VA, Roanoke River/Blue Ridge Parkway Extension, Roanoke/Vinton City Limits to Smith Mountain Lake and Recreational and Interpretive Facilities Construction, Land Acquisition, Funding and COE Section 10 and 404 Permits, Bedford, Roanoke and Franklin Counties, VA, Due: September 01, 1992, Contact: Gary Everhardt (703) 345-3959.

EIS No. 920301, DRAFT EIS, FHW, NC, US 421 Transportation Improvements, just west of the South Fork New River to NC-1361 east of the Town of Deep Gap, Funding, Land Transfer and COE Section 404 Permit(s), Watauga

County, NC, Due: September 15, 1992, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 920302, DRAFT EIS, EPA, TX, Formosa Industrial Facilities Continued Operation and Expansion, Waste Water Discharges, National Pollutant Discharge Elimination System Permit Issuance, Point Comfort, Jackson County, TX, Due: September 14, 1992, Contact: Norm Thomas (214) 655–2260.

EIS No. 920303, DRAFT EIS, BOP, OH, Elkton Federal Correction Complex, Construction and Operation, Site Selection, Columbiana, Carroll or Portage County, OH, Due: September 14, 1992, Contact: Patricia Sledge (202) 514–6470.

EIS No. 920304, FINAL EIS, AFS, BOP, TX, Jefferson County Federal Correctional Complex, Construction and Operation, Site Selection, City of Beaumont, Jefferson County, TX, Due: September 01, 1992, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 920305, DRAFT EIS, COE, CA, Arts Park LA Development and Construction, Approval, Lake Balboa Park, Sepulveda Flood Control Basin, San Fernando Valley, City of Los Angeles, Los Angeles County, CA, Due: September 14, 1992, Contact: Mr. Gene Seagle (213) 894–5312.

EIS No. 920306, FINAL EIS, FTA, HI, Honolulu Rapid Transportation System Improvements, Waiawa through Downtown Honolulu to Waikiki and the University of Hawaii, Funding, Possible COE, Coast Guard Bridge and EPA Permits, Honolulu County, HI, Due: August 31, 1992, Contact: Robert Hom (415) 744–3116.

EIS No. 920307, DRAFT EIS, FHW, MT, US 2 Reconstruction, Columbia Heights to Hungary Horse, Funding, Land Transfer and COE Section 404 Permit, Flathead County, MT, Due: September 21, 1992, Contact: Dale Paulson (406) 449–5310.

EIS No. 920308, DRAFT SUPPLEMENT, NPS, CA, Yosemite National Park General Management Plan, Yosemite Housing Project, Implementation, Yosemite National Park, Mariposa County, CA, Due: September 30, 1992, Contact: Michael Finley (209) 372–0202.

EIS No. 920309, FINAL EIS, UAF, CT, ME, NH, NJ, MA, VT, NY, PA, Aircraft Conversions at the Bradley Air National Guard (ANG) Base, 103rd Tactical Fighter Group, Bradley International Airport, CT and Barnes Air National Guard (ANG) Base, MA, Change in Utilization of Military Training Airspace in the Northeastern U.S., Due: August 31, 1992, Contact: Harry Knudsen (301) 981–8143.

Dated: July 27, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–18160 Filed 7–30–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30341; FRL–4081–4]

Abbott Laboratories; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 31, 1992.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30341] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Rm. 1128, Attention PM 18, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, Registration Division (H7505C), Office of Pesticide Programs, rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Currently Registered Products

1. File Symbol: 275–IA. Applicant: Abbott Laboratories, Chemical and Agricultural Products Division, 1401 North Sheridan Road, North Chicago, IL 60064. Product name: Xentari Technical Powder. Biological Insecticide. Active ingredient: *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s) at 19 percent. Proposed classification/Use: General. For manufacturing use only. (PM 18)

2. File Symbol: 275–IL. Applicant: Abbott Laboratories. Product name: Xentari Water Dispersible Granule. Biological Insecticide. Active ingredient: *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s) at 10.3 percent. Proposed classification/Use: General. For terrestial, greenhouse, and aquatic food crop uses. (PM 18)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered. Comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: July 24, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–18131 Filed 7–30–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL-4190-6]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 170 *de minimis* parties for response costs incurred and to be incurred at the Tonolli Corporation Superfund Site, Nesquehoning, Pennsylvania.

DATES: Comments must be provided on or before August 31, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and should refer to: *In Re Tonolli Corporation Superfund Site,* Nesquehoning, Pennsylvania, U.S. EPA Docket No. III-92-35-DC.

FOR FURTHER INFORMATION CONTACT: Maria Parisi Vickers (215) 597-9387 or Susan Hodges, (215) 597-1715, U.S. Environmental Protection Agency, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tonolli Corporation Superfund Site, in Nesquehoning, Pa. The agreement was proposed by EPA Region III on June 1, 1992. Subject to review by the public pursuant to this Notice, the agreement is also subject to the approval of the Attorney General or his designee, United States Department of Justice. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

1. A. Edelstein and Son, Inc.
2. Aaron Ferer & Sons Co.
3. Abrams Metal Co.
4. Acme Metals
5. Action Metal Co., Inc.
6. Alchem Aluminum, Inc.
7. Alexandria Scrap Corporation
8. Alport Scrap & Salvage
9. American Hofmann Corp.
10. American Papers & Metals
11. Anglers Roost
12. Annadale Scrap Co.
13. Ansam Metal, Corp.
14. Ansonia International Corp.
15. Anthracite Battery Mfg., Inc.
16. Armstrong Containers, Inc.
17. Asarco Incorporated
18. Associated Lead
19. Atlantic Battery Co., Inc.
20. Auburn Golf Car
21. Barrett Battery Co.
22. Battery Systems Co.
23. Beacon Metal Co.
24. Bengart & Memel, Inc.
25. Bethlehen Steel Corp.
26. Billiton Metals and Ores
27. Boggs Scrap Iron and Metal
28. Boston Junk Co.
29. Brandywine Recycler Inc.
30. Bridon-American Corp.
31. Brookside Country Club
32. Buckeye Metals Co.
33. Bundy Tubing
34. Capital Iron & Steel Co., Inc.
35. Capital Scrap Iron and Metal Inc.
36. Ciba-Geigy Corp.
37. City Metals Co., Inc.
38. City Scrap and Salvage, Inc.
39. Continental Group Inc.
40. Continental Metals Corp.
41. Curcio Scrap Metal, Inc.
42. Cycle Systems Inc.
43. D. Katz & Sons Inc.
44. Dalphon and Walsh Salvage Inc.
45. Davis Brothers Scrap Co.
46. Davis Industries, Inc.
47. Delaware Metals Company
48. Delaware Valley Scrap Company
49. Diamond State Salvage Company
50. Diehl Service Center
51. Dubin Metals Inc.
52. E.I. DuPont de Nemours and Co.
53. Electrum Recovery
54. Ellenville Scrap Iron and Metal
55. Elman Recycling Co., Inc.
56. Empire Scrap Metals, Inc.
57. Essex Metal Alloy Co.
58. F.T. Silfies Inc.
59. Federated Metals Corp.
60. Frank Calandra, Inc.
61. Frank H. Nott
62. Fry's Metals
63. Fundamental Minerals and Metals Co.
64. Fusco Inc.
65. Gary's U-Pull It
66. General Metals and Smelting Co.
67. George's Salvage Company
68. Gilbert & Bennett Manufacturing
69. Gloucester Iron & Metal
70. GNB Batteries Incorporated
71. Gold Met
72. Golf Car Systems
73. Grant Mfg. & Alloy Inc.
74. H. Cartiff and Brother Inc.
75. Halpern and Stein, Inc.
76. Hammond Lead Products, Inc.
77. Harcon Corp.
78. Hazel Auto Parts, Inc.
79. Hornell Waste Material Company, Inc.
80. Hurwitz Brothers International
81. Imperial Metal and Chemicals Co.
82. Interstate Burlap & Bag, Inc.
83. Intra-American Metals, Inc.
84. J. Damato Paper Stock Corp.
85. J.E. Kodish and Sons, Inc.
86. J. Sepenuk & Sons, Inc.
87. J.W. Enterprises
88. Jacobson Metal Co.
89. James Tabit & Sons
90. KW Battery
91. Klein, S. Metals Co.
92. Kovatch Truck Center
93. Kovatch Oldsmobile, Inc.
94. L. Lavetan & Sons, Inc.
95. Lake City
96. Levine Iron & Metal, Inc.
97. Lexa Metal Corp.
98. Liberty Iron & Metal
99. Lion Metals Inc.
100. Louis Mack Co., Inc.
101. Lyell Metal Co., Inc.
102. M. Kimberling and Sons Inc.
103. M. Jacob and Sons
104. Manassas Scrap
105. Maryland Metals, Inc.
106. Maryland Recycle Co., Inc.
107. Maxnor Metals
108. Metal Shippers Inc.
109. Metal Traders Inc.
110. Metal Bank of America
111. Mid-Atlantic Equipment Company
112. Midwest Corp.
113. Mindlin Company
114. Morris Iron & Steel Co.
115. Moskowitz Bros., Inc.
116. National Standard Co.
117. New Jersey Zinc Co., Inc.
118. Non-Ferrous Processing Corp.
119. Noranda Sales Corp.
120. North American Philips Corp.
121. Olean Steel Sales
122. Omnisource Corp.
123. Orkin, Harry E.
124. Panther Valley School District
125. Parkway Iron & Metal Company, Inc.
126. Parkwood Iron & Metal Co.
127. Peanut City Iron & Metal Co., Inc.
128. Peck Iron & Metal Co., Inc.
129. Penn-Del Salvage, Inc.
130. Pfizer Co., Inc.
131. Phillip Brothers
132. Prince Georges Scrap
133. Quick Cable
134. R.E. Leppo
135. Raleigh Junk Co.
136. Reliable Junk Company
137. Remington Arms Co., Inc.
138. Resources Alloys and Metals Inc.
139. Riverside Auto & Scrap
140. Ross, Art
141. Roth Bros. Smelting Corp.
142. Roumm's Scrap Metal Co.
143. S.H. Landsmann & Son
144. Sam Kaufman & Son Metal Co.

145. Sam Allen & Son Metal Co.
146. Schiavone-Bonomo Corp.
147. Shore Auto Wrecker Inc.
148. St. Joe's Resources
149. Staiman Industries
150. State Line Scrap Co., Inc.
151. STR Scrap
152. Stump's Scrap Yard
153. Suisman & Blumenthal Inc.
154. TaraCorp Industries
155. Towanda Iron & Metals, Inc.
156. Tube City Iron & Metal Company
157. U.G.I. Corp.
158. U.S. Auto Radiator Manufacturer Corp.
159. United Alloys & Steel Corp.
160. United Scrap Processors, Inc.
161. Varta Industries
162. W.F. Wimmer Co.
163. Walter's Mobil
164. Weiss Scrap Metal Co.
165. Western Electric Company
166. Westinghouse Electric Corp.
167. Wire & Metal Separation System
168. Wise Metal Co., Inc.
169. Zelmore Brothers
170. Zuckerman Metals Inc.

These 170 parties collectively have agreed to pay $3,491,233 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. Of this amount $2,417,701 would reimburse EPA for past response costs incurred at the Tonolli Corporation Superfund Site, and the balance of $1,019,532 will be used to finance future work at the Site.

EPA is entering into the this agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transactions costs. Under this authority EPA proposes to settle with potentially responsible parties at the Tonolli Superfund Site who are responsible for less than one percent of the volume of hazardous substances at the Site. EPA issued a draft settlement proposal on April 1, 1992, invited comments and conducted netogiations on that proposal. On June 1, 1992, EPA issued a final settlement proposal embodied in an Administrative Order on Consent which includes several substantial modifications made in response to comments by *de minimis* parties in letters to EPA and during negotiations with the Agency. The proposed settlement reflects and was agreed upon based on conditions known to the parties on June 1, 1992. *De minimis* settling parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the Tonolli Corporation Superfund Site excluding any federal claims for natural resource damages. They will also be required to pay a settlement premium of 65% on the expected future response costs to compensate EPA for the risks posed by settling before all costs are known.

The settlement as it is now proposed includes several adjustments to the volumetric shares of eligible *de minimis* parties; those adjustments were made after the final settlement proposal was sent to all eligible parties on June 1, 1992, in response to additional evidence provided by these parties or discovered by EPA. Those affected are:

1. Ansam Metal Corporation
2. Battery Salvage Division, Ace Battery, Inc.
3. Ellenville Scrap
4. Golf Car Systems
5. J.W. Enterprises
6. Koplik, William F.
7. Parkway Iron and Metal Corporation, Inc.
8. Ross, Art
9. Staiman Brothers.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent may be obtained from the EPA's Region III, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107.

Edwin Erickson,

Regional Administrator, Region III.

[FR Doc. 92-18159 Filed 7-30-92; 8:45 am]

BILLING CODE 6560-50-M

[OGWDW-FRL-4190-2]

Draft Ground Water Disinfection Rule Available for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water (OGWDW) is announcing the availability of a draft summary of the Ground Water Disinfection Rule for public review and comment. This rule, when promulgated, will include disinfection, performance, monitoring, reporting, and variance requirements for public water systems which use ground water not under the direct influence of surface water as a source. This rule will require disinfection as a treatment technique and will control for certain microbial contaminants (required by sections 1412(b)(8) and 1412(b)(1), respectively, of the 1986 Amendments to the Safe Drinking Water Act). In addition to general regulatory requirements, EPA has included explanations of "natural disinfection" as a means of complying with regulatory requirements, its choice of target organisms for treatment, and efforts to minimize the increase in burden on small systems in the draft rule package. EPA encourages and welcomes public comment on this draft rule. The public comment period for the draft rule will close September 30, 1992. Comments received by the closing date will be considered in the development of the propose rule. Comments received after the closing date will be considered in the development of the final rule.

FOR FURTHER INFORMATION CONTACT: To request a copy of the draft rule, call the Safe Drinking Water (SDW) Hotline at 1-800-426-4791 or write to the Drinking Water Resource Center (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. To ask questions, call the SDW Hotline at 1-800-426-4791. To submit comments concerning the draft rule, send to GWDR Comments Clerk (WH-550D), OGWDW, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

SUPPLEMENTARY INFORMATION: This draft rule is the third in a series of packages made available for public comment, following a strawman rule (June 1990) and draft rule criteria (June 1991), and incorporates public comments received on these earlier packages.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 92-18157 Filed 7-30-92; 8:45am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission received Office of Management and Budget approval for the information collection imposed on operator service providers (OSPs) in Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Phase II, 6 FCC Rcd 2314 pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. OMB also approved the modified information collection as

specified in the Order adopted May 18, 1992; released May 19, 1992 by the Common Carrier Bureau under delegated authority. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90–313, Phase II, 7 FCC Rcd 3457 (Com. Car. Bur. 1992). No changes were made by OMB.

Federal Communications Commission

OMB Number: 3060–0468
Title: Policies and Rules Concerning Operator Service Providers (CC Docket No. 90–313)—Phase II
Expiration Date: December 31, 1993.
Description: All interstate providers of operator services must submit periodic reports concerning their rates, complaints about their services, and their costs of providing services. By Order, the Common Carrier Bureau modified the schedule for submission of the final report by OSPs and the period to be covered by the reports. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90–313, Phase II, 7 FCC Rcd 3457 (Com. Car. Bur. 1992). OSPs are required to submit their fourth report on August 21, 1992. This report shall cover separately the first two calendar quarters of 1992, i.e., January 1, 1992 through March 31, 1992, and April 1, 1992 through June 30, 1992. OSPs are also required to submit data for the period July 1, 1992 through July 31, 1992 not later than September 21, 1992.
Frequency of Response: As directed. Reports must be submitted by August 21, 1992 and September 21, 1992 as indicated above.
Estimated Annual Burden: 2500 responses; 10 hours per response; 25,000 total burden hours.

For further information, contact Shoko Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18114 Filed 7–30–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

City of Long Beach/Long Beach Container; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011067–002.

Title: City of Long Beach/Long Beach Container Terminal, Inc. Terminal Agreement.

Parties: City of Long Beach ("Port"), Long Beach Container Terminal, Inc. ("LBCT")

Synopsis: The amendment reflects a change in the rental LBCT will pay for the use of four cranes on the Port's Pier A.

Agreement No.: 224–200598–001.

Title: City of Los Angeles and California Cartage Company Marine Terminal Agreement.

Parties: The City of Los Angeles ("Port") California Cartage Company ("CCC").

Synopsis: The Agreement adjusts the rent payable by CCC to the Port.

Dated: July 27, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–18082 Filed 7–30–92; 8:45 am]

BILLING CODE 6730–01–M

[C.O. 1, Amdt. No. 20]

Organization and Functions of the Federal Maritime Commission

The following delegations of authority are made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by amending subsection 9.14 to read as follows:

9.14 Authority contained in 46 CFR part 582 to cancel the tariff or tariffs of any common carrier, and suspend the license of any ocean freight forwarder, who fails to file an anti-rebate certification.

Dated: July 24, 1992.

Christopher L. Koch,

Chairman.

[FR Doc. 92–18081 Filed 7–30–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0770]

10 Percent Revenue Limit on Bank-Eligible Securities Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment; supplemental notice.

SUMMARY: This document supplements a request for comment which appeared in the **Federal Register** on July 29, 1992 (57 FR 33507).

DATES: Comments must be received by August 27, 1992.

ADDRESSES: Comments, which should refer to Docket No. R–0770, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m., and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), Scott G. Alvarez, Associate General Counsel (202/452–3583), Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–4544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On July 23, 1992, the Federal Reserve Board requested public comment on alternative methods to adjust the 10 percent revenue test limiting ineligible securities activities of Section 20 subsidiaries of bank holding companies. The current 10 percent test was designed to prevent Section 20

subsidiaries from being "engaged principally" in underwriting and dealing in bank-ineligible securities in violation of Section 20 of the Glass-Steagall Act.

The Board proposed alternative tests because it believed that changes in the level and structure to interest rates since the revenue test was last considered in September 1989 can alter the measure of whether a Section 20 subsidiary is "engaged principally" in ineligible securities in ways that were not foreseen by the Board. One possible alternative test suggested was a revenue test that is indexed to interest rate changes. The method of indexing proposed is to adjust current interest and dividend revenue in order to calculate the revenue that would have been earned in the current period if the Treasury yield curve were as it was in September 1989.

Under the proposed indexing method, current revenue would be adjusted by a series of factors supplied by the Board that very according to the average duration of the securities portfolio. For each duration the factor represents the ratio of interest rates in September 1989 on Treasury securities to the average interest rates in the most recent quarter. These adjustment factors would then be applied to current interest and dividend revenue.

In order to allow interested parties to determine how such a proposed index might operate in practice, and thereby to be in better position to comment on the appropriateness of a test using such an index, the Board is providing a sample table of adjustments that could be used under the proposed indexing revenue test to adjust interest and dividend revenue in the second quarter, assuming that this test were in effect. The sample table of adjustment factors being provided is constructed from the ratios of average interest rates in September 1989 to average interest rates in the second quarter of 1992. The risk-free rates used in calculating these factors are secondary-market quotes of the yields on Treasury bills for durations of three, six, and twelve months and on STRIPS, or zero-coupon Treasury securities, for durations of two years or more. The adjustment factors in this sample table are calculated using Wednesday observations but the Board would anticipate using daily data to calculate adjustment factors. A more detailed selection of durations could be make available if necessary.

To use the indexing method described in the Board's request for comments in conjunction with the sample table provided to determine compliance with the 10 percent revenue limit for the current quarter, a Section 20 subsidiary would calculate the average duration of its eligible and its ineligible securities portfolios over the quarter. To calculate indexed eligible revenues, the subsidiary would calculate the average duration of its eligible securities portfolio over the quarter and select from the sample table the adjustment factor appropriate for the duration. The subsidiary would then multiply the actual eligible interest and dividend revenue for the quarter by this adjustment factor to determine the indexed eligible interest and dividend revenue. The subsidiary would repeat this procedure based upon the average duration of its ineligible securities portfolio and the appropriate adjustment factor for that duration category to determine indexed ineligible interest and dividend revenue for the quarter. The indexed eligible and ineligible interest and dividend revenues would then be added to the other types of revenue earned during the quarter to calculate an adjusted ratio of ineligible revenue to total revenue subject to the 10 percent test.

The table of factors being provided is only one method by which current revenue could be adjusted to account for the level and structure of interest rates in September 1989. The Board requests comments on whether other methods of calculating these adjustments may be more appropriate.

The sample table is set forth as follows:

FACTORS TO ADJUST INTEREST AND DIVIDEND REVENUE

Duration	Ratio[1]
Months:	
1	2.10
3	2.10
6	2.06
12	1.93
Years:	
2	1.46
3	1.33
4	1.23
5	1.17
6	1.13
7	1.10
10	1.04
20	0.99
30	0.95

[1] Ratio of interest rates in September 1989 to second quarter 1992.

Note: Adjustment factors were calculated using secondary-market quotes of the yields on Treasury bills for durations of three, six and twelve months and on STRIPs, or zero-coupon Treasury securities, for durations two years and greater. Data are average of Wednesday observations.

By order of the Board of Governors of the Federal Reserve System, July 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-18330 Filed 7-30-92; 8:45 am]

BILLING CODE 6710-01-M

Central Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 24, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Central Bancshares, Inc., St. Paris, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First Central National Bank of St. Paris, St. Paris, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First National Bancorp, Gainesville, Georgia; to merge with First Citizens Bancorp of Cherokee County, Inc., Ball Ground, Georgia, and thereby indirectly acquire Citizens Bank, Ball Ground, Georgia.

Board of Governors of the Federal Reserve System, July 27, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18174 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-F

First Union Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 92-16725) published at page 31517 of the issue for Thursday, July 16, 1992.

Under the Federal Reserve Bank of Richmond, the entries for First Union Corporation and Wachovia Corporation are revised to read as follows:

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y. **Comments on this application must be received by August 5, 1992.**

2. Wachovia Corporation, Winston-Salem, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y. **Comments on this application must be received by August 5, 1992.**

Board of Governors of the Federal Reserve System, July 27, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18175 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-F

Rick F. Riley, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 20, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rick F. Riley, Kirksville, Missouri; to acquire an additional 10.83 percent for a total of 27.63 percent, and Randall E. Riley, Kirksville, Missouri, to acquire an additional 12.89 percent, for a total of 32.89 percent of the voting shares of Schuyler County Bancshares, Inc., Kirksville, Missouri, and thereby indirectly acquire Northeast Missouri State Bank, Kirksville, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Raymond Eugene McDonald, Greenville, Texas; to acquire an additional 29.46 percent of the voting shares of Colonial Bancshares of Greenville, Inc., Greenville, Texas, and thereby indirectly acquire Colonial Bank of Greenville, Greenville, Texas.

Board of Governors of the Federal Reserve System, July 27, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18176 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for September 1992.

The National Advisory Council on Drug Abuse will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(C) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: National Advisory Council on Drug Abuse.
Meeting Date: September 16-17, 1992.
Place: National Institutes of Health, Building 31C, Conference Room #6, 9000 Rockville Pike, Bethesda, Maryland 20892.
Open: September 16, 9 a.m.-1 p.m. September 17, 9 a.m.-5 p.m.
Closed: Otherwise.
Contact: Ms. Barbara Baechtel, Room 10A-08, Parklawn Building, Telephone (301) 443-3229.

Committee Name: Drug Testing Advisory Board, NIDA.
Meeting Date: September 17, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: 9 a.m. to 12 p.m.
Closed: Otherwise.
Contact: Donna M. Bush, Ph.D., Room 9A-53, Parklawn Building, Telephone (301) 443-6014.

Dated: July 27, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-18108 Filed 7-30-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

AGENCY: Centers for Disease Control (CDC). Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The interim revisions pertaining to CDC-funded AIDS information and education materials and programs, as published in the June 15, 1992 **Federal Register** (57 FR 26742), will continue to remain in effect.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control, (404) 639-1480.

SUPPLEMENTARY INFORMATION: By **Federal Register** notice of June 15, 1992 (57 FR 26742), the Centers for Disease Control (CDC) published interim revisions to the terms and conditions for the receipt of CDC funds for AIDS prevention programs that develop educational and related program materials.

The June 15, 1992 notice revised the AIDS content guidelines in response to the May 1992 decision of the U.S. District Court for the Southern District of New York in the case of *Gay Men's Health Crisis* v. *Sullivan,* No. 88-CIV-7482 (S.D.N.Y. 1992).

In the June 15, 1992 revision, CDC deleted the "offensiveness" standard which the District Court held to be unconstitutional, and, as a matter of policy, CDC replaced this standard with the language contained in Section 2500 of the Public Health Service Act (42 U.S.C. 300ee).

The June 15, 1992 **Federal Register** notice also indicted that a decision was then pending as to whether or not to appeal the District Court's decision in *Gay Men's Health Crisis* v. *Sullivan.*

CDC has no practical problem with using this section 2500 standard in lieu of the "offensiveness" standard. Furthermore, recipients of CDC funds will continue to use Program Review Panels to determine the appropriate content of AIDS education and information materials. Accordingly, no appeal of the District Court's decision will be sought.

The interim revisions, as published in the June 15, 1992 **Federal Register** (57 FR 26742), will continue to remain in effect for CDC-funded AIDS prevention programs.

Dated: July 28, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control

[FR Doc. 92-18247 Filed 7-30-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92D-0273]

Extra-Label Use of New Animal Drugs in Food-Producing Animals; Listing of Additional Drugs; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7125.06 entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals." Consistent with the Commissioner's decision, published in the **Federal Register** of August 23, 1991 (56 FR 41902), the guide was revised to include the nitrofuran drugs among those drugs given the highest priority for regulatory attention regarding extra-label use. In addition, based on high regulatory concern, clenbuterol was also added to the general list, and the sulfonamide drugs (except approved uses of sulfadimethoxine, sulfabromomethazine, and sullfaethoxypyridazine) were added to the list regarding the prohibition of their use in lactating dairy cattle. Labeling information was added pertaining to dispensing for extra-label use.

ADDRESSES: Submit written requests for single copies of revised CPG 7125.06 to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.06 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8726.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7125.06 "Extra-Label Use of New Animal Drugs in Food-Producing Animals" to reflect the Commissioner's conclusion, published in the **Federal Register** of August 23, 1991, that the nitrofuran drugs (furazolidone and nitrofurazone) are unsafe for oral or parenteral use in food-producing animals. In addition, clenbuterol was added to the list of drugs for the highest regulatory attention when used in food-producing animals. Also, the list was revised to include the sulfonamide drugs (except for approved uses of sulfadimethoxine, sulfabromomethazine, and sulfaethoxypyridazine) in lactating dairy cattle.

The guide, as revised, includes the following:

(1) In all food-producing animals: Chloramphenicol, Clenbuterol, Diethylstilbestrol (DES), Dimethtridazole, Ipronidazole, other nitroimidazoles, Furazolidone (except for approved topical use), and Nitrofurazone (except for approved topical use);

(2) In lactating dairy cattle: Sulfonamide drugs (except approved uses of sulfadimethoxine, sulfabromomethazine, and sulfaethoxypyridazine).

These drugs are being listed as those of highest priority for regulatory attention regarding extra-label use in food-producing animals. Unlike the use of drugs in food-producing animals, under usual circumstances, veterinary practitioners may consider extra-label use of new animal drug products in nonfood-producing practice without being subject to FDA enforcement actions. In addition, the guide is revised to provide appropriate labeling for drugs prescribed or dispensed for extra-label use.

The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: July 20, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affiars.

[FR Doc. 92-18087 Filed 7-30-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92N-0136]

Proposed Implementation of International Conference on Harmonisation Consensus Regarding New Drug Applications; Proposed Implementation Document; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is reopening the comment period on the proposed implementation document that is consistent with the consensus developed by the Safety Working Group at the International Conference on Harmonisation (ICH) meeting. The notice of availability of this document published in the Federal Register of April 15, 1992 (57 FR 13105). This proposed implementation document describes scientific and technical aspects for conducting single-dose toxicity studies, reproduction and developmental studies, long-term toxicity studies, carcinogenicity studies, and the timing and duration of studies to be submitted to FDA in support of new drug applications. FDA is taking this action in response to a request for an extension of the comment period.

DATES: Written comments by August 14, 1992.

ADDRESSES: Submit written comments on the proposed implementation document to the contact person (address below) and to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alan Taylor, Center for Drug Evaluation and Research (HFD-150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4260.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 15, 1992 (57 FR 13105), FDA published a notice that announced the availability of a proposed implementation document that is consistent with the consensus developed by the Safety Working Group of ICH. This document discusses FDA's present plan for adopting guidance to industry on: (1) Single-dose (acute) toxicity studies; (2) reproductive and developmental studies; (3) long-term toxicity studies; and (4) carcinogenicity studies. The proposed implementation also describes the timing and duration of animal studies relative to the expected extent and duration of human exposure to the drug. The agency also requested comments on the attachments to the implementation document. Interested persons were given until June 15, 1992, to submit written comments on the implementation document at the attachments.

On June 15, 1992, FDA received a request from the International Pharmaceutical Excipients Council to extend the comment period an additional 30 days.

The agency has carefully considered the request and has decided to extend the comment period to allow interested persons to submit meaningful comments on the implementation document. Accordingly, FDA is extending the comment period to August 14, 1992, so that interested persons will have an ample opportunity to comment on this important issue.

Interested persons may, on or before August 14, 1992, submit to the Dockets Management Branch and the contact person (addresses above) written comments on the draft implementation document and the attachments. Two copies of any comments are to be submitted to the Dockets Management Branch and a single copy is to be submitted to the contact person. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and a copy of the proposed implementation document may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18314 Filed 7-29-92; 2:56 p.m.]

BILLING CODE 4160-01-F

[Docket No. 92E-0080]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cefzil®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cefzil® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cefzil®. Cefzil® (cefprozil) is indicated for the treatment of patients with mild to moderate infections caused by susceptible strains of designated microorganisms in upper respiratory tract, lower respiratory tract, and skin and skin structure. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cefzil® (U.S. Patent No. 4,520,022) from Bristol-Myers Squibb Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter

dated June 11, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Cefzil® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cefzil® is 2,248 days. Of this time, 1,615 days occurred during the testing phase of the regulatory review period, while 633 days occurred during the approval phase These periods of time were derived from the following dates:

1. *The date an exemption under section 507(d) of the Federal Food, Drug, and Cosmetic Act became effective*: October 27, 1985. The applicant claims October 26, 1985, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 27, 1985, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act*: March 30, 1990. FDA has verified the applicant's claim that March 30, 1990, was the date the new drug applications (NDA's) for Cefzil® (NDA 50–664 and NDA 50–665) were initially submitted.

3. *The date the application was approved*: December 23, 1991. FDA has verified the applicant's claim that NDA's 50–664 and 50–665 were approved on December 23, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,305 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 29, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 27, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1992.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 92–18110 Filed 7–30–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 24, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Notice Regarding Substitution of Party Upon Death of Claimant-Reconsideration of Disability Cessation—0960–0351. The information on form SSA–770 is used by the Social Security Administration to determine the intent of substitute parties to pursue an appeal which was filed by a beneficiary who died. The respondents consist of such parties.

Number of Respondents: 300.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 25 hours.

2. Disability Determination and Transmittal—9060–0437. The information of form SSA–831 is used by the Social Security Administration (SSA) to document the State agency determination as to whether an individual who files a claim for disability benefits is eligible for those benefits. It is also used for program management and for evaluation. The respondents are State agency employees who make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 40,900.
Average Burden Per Response: 2,208,600
*Estimated Annual Burden:*5 52.150 hours.

3. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title XVI—0960–0443. The information on form SSA–832 is used by the Social Security Administration (SSA) to document State agency determinations as to whether an individual's disability benefits should be terminated or continued on the basis of his or her impairment. The respondents are State Disability Determination Services who make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 185.
Average Burden Per Response: 130 minutes.
Estimated Annual Burden: 5,000 hours.

4. Cessation or Continuance of Disability or Blindness Determination and Transmittal—0960–0442. The information of form SSA–833 is used by the Social Security Administration (SSA) to document determinations made regarding disability claims. The respondents are State agencies who make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 926.
Average Burden Per Response: 130 minutes.
Estimated Annual Burden: 125,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 27, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–18048 Filed 7–30–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-89]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 31, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 24, 1992.

Randall H. Erben,

Acting Assistant Secretary for Planning and Community Development.

[FR Doc. 92-17921 Filed 7-30-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of Public Advisory Group—Exxon Valdez Oil Spill

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment of Public Advisory Group—Exxon Valdez Oil Spill.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988).

Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing an advisory committee (the Public Advisory Group) on behalf of the Exxon Valdez Oil Spill Trustees.

This Public Advisory Group is established pursuant to the terms of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of the *United States of America* v. *State of Alaska*, Civil Action No. A91-081.

FOR FURTHER INFORMATION CONTACT: David Gibbons, Interim Administrative Director Restoration Team, c/o Exxon Valdez Oil Spill Restoration Team, 645 G St., Anchorage, AK 99501 (907) 278-8012; Fax (907) 276-7178.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V Exxon Valdez ran aground on Bligh Reef in Prince William Sound in Alaska. Approximately 11 million gallons of North Slope crude oil were spilled into the waters of the Sound and were carried by currents south and west along the southeast side of Kenai Peninsula into the Gulf of Alaska, lower Cook Inlet, the northern coast of Kodiak Island and portions of the east coast of the Alaska Peninsula. Oil was deposited on beaches as far as 600 miles from Bligh Reef.

Massive cleanup and containment efforts were initiated by Exxon Company USA and were continued in 1990, 1991 and 1992. Damage Assessment studies were conducted and litigation was brought against the Exxon Companies by the State and Federal governments.

On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations.

Under the civil settlement agreement Exxon Companies agreed to pay to the governments $900 million over a period of ten years.

The use of these funds is specified in the approved Court document to be spent "* * * to reimburse or pay costs incurred by the United States or the Stare or both after March 12, 1991 to assess injury resulting from the oil spill and to plan, implement and monitor the restoration, rehabilitation, or replacement of natural resources, natural resource services, or archaeological sites and artifacts injured, lost, or destroyed as a result of the oil spill, or the acquisition of equivalent resources or services."

Except for certain reimbursements for past damage assessment and litigation costs of the two governments, Exxon's payments are deposited into the registry of the Court and withdrawn as restoration plans and programs are initiated by the two governments.

The two governments manage these joint funds through a six member Trustee Council composed of three State trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal Representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

To carry out its advisory role under the MOA, the Public Advisory Group will make recommendations to and advise the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment;

c. Planning, evaluation and conduct of restoration activities.

The Trustee Council will propose an annual program designed to facilitate restoration of resources and services injured by the T/V Exxon Valdez oil spill. This program will be presented to the Public Advisory Group during the public review process prior to approval by the Trustee Council.

The Public Advisory Group will consist of 15 members representing principal interests of the area impacted by the T/V Exxon Valdez oil spill. Members will reflect a broad range of interests, be knowledgeable about the area and be able to articulate differing perspectives and views concerning restoration of the injured resources and services.

The Public Advisory Group will function solely as an advisory body, and in compliance with provisions of the FACA.

Dated: June 16, 1992.

John E. Schrote,

Assistant Secretary, Policy, Management and Budget.

Certification

I hereby certify that the establishment of the Public Advisory Group, an advisory committee to make recommendations to and advise the Exxon Valdez oil spill Trustee Council in Alaska, is necessary and in the public interest in connection with the performance of duties mandated by the settlement of *United States* v. *State of Alaska,* No. A91-981 CV, and is in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and supplemented.

Dated: June 22, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-18071 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Indian Business Development Program Applications and Requirements (25 CFR part 286).

OMB Approval Number: 1076-0093.

Abstract: The information being requested relates to potential of success of businesses on Indian reservations for which grant funds have been requested. Information will be used to select the applicants with best potential and to monitor progress so technical assistance can be provided when needed. Indian tribes and individuals will be affected.

Bureau Form Numbers: BIA Forms 8001, 8004, and 8005.

Frequency: On occassion.

Description of Respondents; Indian tribes, Indian organizations, and Indian individuals.

Estimated Completion Time:

Form	Time
8001	1 hour.
8004	30 minutes.
8005	30 minutes.

Annual Responses: 900.

Annual Burden Hours: 700.

Bureau Clearance Officer: Gail Sheridan 202 208-2685.

Dated: July 23, 1992.

Patrick A. Hayes,

Director, Office of Trust and Economic Development.

[FR Doc. 92-18077 Filed7-30-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-060-02-5101-B002; CA-27365]

Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste Draft Environmental Impact Report/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, a Draft Environmental Impact Statement has been prepared for the proposed Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste in the California Desert Conservation Area, San Bernardino County, California. The proposed action is located at Broadwell Dry Lake, approximately 60 miles east of Barstow and approximately 8 miles north of Interstate 40 and Ludlow, California. This document has been prepared by the Bureau of Land Management (BLM) and the County of San Bernardino as a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) to meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

Reading copies are available at: BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow; BLM, California Desert District, 6221 Box Springs Blvd, Riverside; San Bernardino County Government Center, 385 N. Arrowhead Avenue, Third Floor, San Bernardino; San Bernardino County Building, 15505 Civic Drive, Victorville; Newberry Springs Community Center, 30887 Newberry Road, Newberry Springs: and libraries in Victorville, Barstow, and San Bernardino.

DATES: Written comments on the draft must be delivered or postmarked no later than September 30, 1992. Oral and/or written comments may also be presented at the public meetings scheduled at the following locations and dates:

Location	Date	Time
Newberry Springs Community Center, 30887 Newberry Road, Newberry Springs, CA	August 31, 1992	7-9 p.m.
Holiday Inn, I-15 and Palmdale Road, Victorville, CA	September 1, 1992	7-9 p.m.
San Bernardino County Government Center, Hearings Chamber, 385 N. Arrowhead Avenue, San Bernardino, CA	September 2, 1992	7-9 p.m.

ADDRESSES: Written comments should be addressed to County of San Bernardino, Planning Department, 385 N. Arrowhead Avenue, Third Floor, San Bernardino, CA 92415-0182, Attn: Mr. Randy Scott.

FOR FURTHER INFORMATION CONTACT: Sharon Paris, BLM Project Manager, 150 Coolwater Lane, Barstow, CA 92392; telephone (619) 256-3591.

SUPPLEMENTARY INFORMATION: The Draft EIR/EIS identifies and describes the probable environmental impacts that would result from the proposed construction and operation of a specified hazardous waste disposal and treatment facility. The proposed action consists of an aboveground disposal area with a capacity of approximately 16 million tons, an 8.5 mile 60-foot wide right-of-way for an access road, and the mining of 10.4 million tons of coarse borrow material on a 363 acre site and

5.5 million tons of clay material on a 227 acre site.

Issues identified through the scoping process and evaluated in the EIR/EIS include geology, soils, hydrology, noise, biological resources, cultural and paleontological resources, air quality, water supply and quality, scenic/visual resources, transportation, land use, wilderness study areas, and public health and safety.

Dated: July 22, 1992.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 92-17803 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-40-M

[WY-030-02-4332-10]

Advisory Council To Hold Meeting and Field Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Rawlins District Advisory Council; meeting and field tour.

SUMMARY: Notice is hereby given in accordance with Public Law 94-597 that a meeting and field tour of the Rawlins District Advisory Council will be held. This notice sets forth the schedule for the meeting and field tour.

DATES: August 26, 1992, 9 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Ray Hanson, District Outdoor Recreation Planner, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The schedule of the meeting and field tour will include:

1. Field tour briefing and orientation of Sweetwater Canyon Wilderness Study Area at Sweetwater Station Rest Area, U.S. Highway 287 and Wyoming State Highway 135 at 9 a.m.

2. Travel to Sweetwater Canyon Wilderness Study Area at 10 a.m.

3. Tour Sweetwater Canyon Wilderness Study Area from 11 a.m. to 3 p.m.

4. Return to Sweetwater Station Rest Area and adjourn at 4 p.m.

The meeting and field tour is open to the public. Anyone interested in attending the meeting and field tour or making an oral presentation must notify the District Manager by August 12, 1992. Written statements may also be filed for the Council's consideration. Summary minutes of this meeting field tour will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: July 22, 1992.

Al Pierson,

District Manager.

[FR Doc. 92-18074 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-02-4212-13; #CA 30080]

Notice of Realty Action, Notice of Intent To Amend the South Sierra Foothills Management Framework Plan, and Notice of Availability of Planning Criteria; Exchange of Public and Private Lands in Kern, Tulare, and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, notice of intent, and notice of availability.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1716):

Tract No. and Legal Description

T11N, R16W, SBM

1CM
Sec. 14 SE¼.
Sec. 21 N½, N½SW¼, E½SW¼SW¼, SE¼SW¼, SE¼.
Sec. 22 All.
Sec. 23 All.
Sec. 24 All.

The above public lands are located in Kern County, CA. An amendment to the Bureau's South Sierra Foothills Management Framework Plan has been proposed to provide for the exchange of the above public lands.

T27S,R10E, MDM

7C
Sec. 13 Lot 4.
8C
Sec. 13 Lots 1 and 2.
8C
Sec. 24 N½NE¼.
12C
Sec. 28 SE¼SW¼.

T27S, R11E, MDM

8C
Sec. 19 Lot 4, NE¼NW¼.

T28S, R13E, MDM

1S
Sec. 28 S½SW¼.
1S
Sec. 32 SE¼NE¼, N½SE¼.
1S
Sec. 33 Lots 1, 2, 3, and 4, N½, N½S½.
1S
Sec. 34 Lots 1, 2, 3, and 4, S½NE¼, NW¼, N½S½.
2S
Sec. 35 Lots 3 and 4, N½SE¼.

T29S, R13E, MDM

1S
Sec. 2 Lots 3 and 4, SW¼NW¼, W½SW¼.
1S
Sec. 3 Lots 1, 2, 3, and 4, S½N½, SE¼.
1S
Sec. 4 Lots 1 and 2.
2S
Sec. 1 Lots 2, 3, and 4, SW¼NW¼.
2S
Sec. 2 Lot 1, SE¼NE¼.
3S
Sec. 2 NW¼SE¼.
4S
Sec. 11 NE¼NW¼.
5S
Sec. 1 SE¼SW¼, SE¼.
5S
Sec. 11 S½NE¼, NE¼SW¼, N½SE¼.
5S
Sec. 12 N½, W½SW¼, NE¼SE¼.
6S
Sec. 14 S½NW¼, N½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼.

T11N, R33W, SBM

1T
Sec. 9 Lot 1, NW¼,NE¼, S½NE¼, SE¼.
1T
Sec. 10 Lots 2 and 3, SW¼NW¼, SW¼, W½SE¼.
1T
Sec. 15 NW¼NE¼, NW¼.
1T
Sec. 16 NE¼.
2T
Sec. 8 N½NE¼.
2T
Sec. 9 W½NW¼.

The above public lands are located in San Luis Obispo County, California. In exchange for some of the above lands, the United States will acquire the following private lands from the Trust for Public Land, a private, nonprofit organization:

T17S, R29E, MDM

Sec. 9 S½S½.
Sec. 16 NE¼, SE¼NW¼, S½.
Sec. 17 NE¼SW¼NE¼, S½SW¼NE¼, SE¼SE¼NW¼, N½SW¼, N½SE¼, SE¼SW¼, S½SE¼.

The above private lands are located in Tulare County, CA.

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjoining landowners by The Trust for Public Land, a private, nonprofit organization. The purpose of this exchange is to acquire lands in the Three Rivers, California area with important scenic, riparian, and access values. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau tracts that are difficult for the Bureau to

manage. The public interest will be well served by completing the exchange. Publication of this notice in the **Federal Register** segregates the above public land from appropriation and entry under the public land laws, right-of-way laws, permit laws, and mining laws, but not exchange under Sec. 206 of the Federal Land Policy and Management Act of 1976. The segregative effective will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first. This notice also fulfills the requirements of 43 CFR 1610.2, 3 for an amendment to the Bureau's current South Sierra Foothills Management Framework Plan, concerning the above Tract #1CM and its status for land exchange. The decision on the suitability of exchange for tract #1CM will be based upon the results of biological, cultural, and mineral reports to be done on the Tract, as well as the useability of the Tract by the general public. The exchange would be on an equal value basis, not an acre-for-acre basis. An independent appraisal will establish the fair market value of the public and private lands. Some of the above public land tracts may not be exchanged, in order to achieve an equal value with the above private land. All mineral rights on the above public lands are expected to be exchanged with the surface rights, however some mineral rights may be reserved to the United States based on the completion of a mineral report. On public land transferred to the Trust, the Bureau will reserve to the United States a right-of-way reservation for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Public land transferred to the Trust will also be subject to the following rights-of-way:

S 043926; for State Route 58; affects Tract #2S.
CA 4355; for underground telephone line; affects Tracts #2S & 4S.
S 078669; for a water tank; affects Tract #2S.
CA 13054; for two oil pipelines and an electric line; affects Tracts #2S, 3S, and 4S.
S 079809; for a firebreak; affects Tract #5S.

The proposed planning criteria for this amendment will provide guidance for the resolution of issues for Tract #1CM. The criteria will address protection of sensitive resources through the planning process. Planning criteria address: purpose and need for the criteria; goals; anticipated issues, decisions, and evaluation criteria; alternative management options; data needs; and the preparation schedule. The planning criteria are now available for comment. Copies may be obtained from the following address. The proposed plan amendment and environmental assessment will be available for public review upon request once the environmental assessment is complete. Interested parties may submit comments to the BLM Area Manager until September 14, 1992. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

Dated: July 3, 1992.

Kenneth L. Volpe,

Acting Area Manager.

[FR Doc. 92–16664 Filed 7–30–92; 8:45 am]

BILLING CODE 4310–40–M

[MT–030–4212–14]

Notice of Realty Action, Sale of Public Land in North Dakota

SUMMARY: The following lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C., 1713), at not less than the estimated fair market value (FMV).

DATES: September 29, 1992.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickinson District Office, 701–225–9148.

SUPPLEMENTARY INFORMATION:

Parcel and Legal Description

Fifth Principal Meridian

NDM79593
T. 151 N., R. 65 W., sec. 35: Lot 1, 5.3 acres, Benson County, FMV $300.
NDM79594
T. 154 N., R. 101 W., sec. 29: SWSE, Part, 10.0 acres, Williams County, FMV $800.
NDM79595
T. 155 N., R. 88 W., sec. 20: Lot 4, 6.87 acres, Mountrail County, FMV $475.
NDM79596
T. 157 N., R. 89 W., sec. 29: Lot 1, 16.8 acres, Mountrail County, FMV $1,175.
NDM79597
T. 157 N., R. 91 W., sec. 34: Lot 2, 17.3 acres, Mountrail County, FMV $1,200.
NDM79598
T. 156 N., R. 91 W., sec. 5: Lot 4, **60.55 acres, **15 acres above the high water line; Mountrail County, FMV $1,000.
NDM79599
T. 152 N., R. 87 W., sec. 1: Lot 6, 16.50 acres, Ward County, FMV $1,300.
NDM79630
T. 157 N., R. 50 W., sec 8: Lot 1, 10.94 acres, Walsh County, FMV $800.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 a.m., M.D.T., on September 29, 1992, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m., M.D.T., on September 28, 1992. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised FMV specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the United States Department of the Interior, BLM, for not less than the 10 percent of the amount of the bid.

Bids on unsold parcels will be opened each Tuesday after the date of the sale at 10 a.m., M.D.T., until the parcels are sold. The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will be given the right to meet the highest bid. Lessees and adjoining land owners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the

qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: July 23, 1992.

Gene C. Campbell,

Acting District Manager.

[FR Doc. 92-18076 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-DN-M

[AZA-050-02-4212-14; AZA 25294]

Arizona; Intent To Prepare a Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management Yuma District is preparing a plan amendment to the Yuma District Resource Management Plan. This amendment is being prepared to make 496.56 public acres located north of Quartzsite, Arizona, available for disposal through a direct sale. The land would be purchased by the town of Quartzsite for expansion of the 1,200-bed, medium security Federal prison site. The land would also provide a buffer zone between the town and the soon-to-be-built facility.

This Notice of Intent is being published in the **Federal Register** under the authority of title 43, Code of Federal Regulations, subpart 1610, section 2(c).

FOR FURTHER INFORMATION CONTACT: Michael A. Taylor, Areas Manager, Yuma Resource Area, Bureau of Land Management, telephone (602) 726-6300.

SUPPLEMENTARY INFORMATION: Complete records of all phases of the planning process will be available for public review at the Bureau of Land Management Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Dated: July 21, 1992.

Herman L. Kast,

District Manager

[FR Doc. 92-18075 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-329]

Global Competitiveness of U.S. Advanced-Technology Industries; Cellular Communications

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: July 23, 1992.

SUMMARY: Following receipt of a request on June 11, 1992, from the Senate Committee on Finance, the Commission instituted investigation No. 332-329, Global Competitiveness of U.S. Advanced-Technology Industries: Cellular Communications, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Richard Brown (202-205-3438) or Ms. Susan Kollins (202-205-3441). For information on the legal aspects of this investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202-205-1107.

Background

This is one of three competitiveness studies requested by the Committee on Finance in its letter of June 11, 1992. The other two studies concern the aircraft and computer industries, respectively. These three studies are part of a series begun in 1990 at the request of the Committee. In a letter dated June 21, 1990, the Committee asked that the Commission, pursuant to sections 332 (b), (d), and (g) of the Tariff Act of 1930, expand its collection of and ability to analyze information on the competitiveness of advanced technology manufacturing industries in the United States. It also asked the Commission to undertake a two part process under which it would (1) Within 3 months of receipt of the letter, identify the U.S. advanced-technology industries to be monitored (using the criteria set out by the Committee) and recommend three of those industries as subjects for comprehensive Commission studies; and (2) within 12 months of receipt of a subsequent Committee letter either agreeing with or modifying the Commission's recommendations, submit its reports on the three industries.

In response, the Commission instituted investigation No. 332-294 for the purpose of identifying industries to be monitored and recommending three for comprehensive study. In its report to the Committee in September 1990, the Commission identified ten advanced-technology industries and recommended the following three for comprehensive study: Communications technology and equipment, pharmaceuticals, and semiconductor manufacturing and testing equipment. The Committee by letter of September 27, 1990, approved the Commission's recommendations, and the Commission furnished its reports on the three investigations (investigation Nos. 332-301, 332-302, and 332-303) in late September 1991. Notice of the institution of investigation No. 332-294 was published in the **Federal Register** of July 26, 1990 (55 FR 3053), and notice of the institution of the three comprehensive-study investigations was published in the **Federal Register** of November 15, 1990.

In the three new studies, the Commission will, as requested by the Committee in its June 11, 1992, letter, seek to examine all factors found by the Commission to be relevant to the global competitiveness of the subject industries, including but not limited to, government policies, regulatory and trade impediments, and research and development financing and expenditures. The Commission will also seek the views of experts on the implications of these factors for U.S. trade interests and policy. As requested, the Commission will submit its first industry report, cellular communications, by June 11, 1993.

Public Hearing

A public hearing in connection with the cellular communications investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 20, 1993. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than noon, January 6, 1993. Any prehearing briefs (original and 14 copies) should be filed not later than noon, January 6, and any posthearing briefs should be filed by February 3.

Written Submissions

In lieu of or in addition to appearing at the hearing, interested persons are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than February 3, 1993. All submissions should be addressed to the Secretary of the Commission at the Commission's office, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: July 24, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92–18155 Filed 7–30–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected. An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Miles ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics.

Annual Survey of Occupational Injuries and Illnesses.

1220–0045; BLS 9300.

Annually.

State and local government (as per State law); farms; businesses or other for-profit; non-profit institutions; small businesses or organizations.

280,000 respondents; 250,000 total hours; 54 minutes per response; 1 form.

The Annual Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data are used to evaluate the effectiveness of Federal and State programs and to prioritize scarce resources.

Signed at Washington, DC, this 27th day of July, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–18163 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–22–M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance

of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Delaware:
DE91-4 (July 31, 1992) .....
DE91-5 (July 31, 1992) .....

Volume II

Missouri:
MO91-15 (July 31, 1992)..... p. All.

Volume III

Oregon:
OR91-4 (July 31, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware:
DE91-2 (Feb. 22, 1991)..... p. 95, pp. 96-100.
Florida:
FL91-48 (Feb. 22, 1991)..... p. 218c.
New Jersey:
NJ91-2 (Feb. 22, 1991)..... p. 701, pp. 703, 711.
New York:
NY91-13..... p. 901, pp. 904-905.
NY91-18 (Feb. 22, 1991)..... p. 931, p. 933.

Volume II

Illinois:
IL91-1 (Feb. 22, 1991) ..... p. 69, p. 79.
IL91-7 (Feb. 22, 1991) ..... p. 137, pp. 138-140.
IL91-9 (Feb. 22, 1991) ..... p. 153, pp. 154, 155.
Kansas:
KS91-6 (Feb. 22, 1991)..... p. All.
Michigan:
MI91-2 (Feb. 22, 1991)..... p. 461, p. 470.
MI91-17 (Feb. 22, 1991)..... p. All.
MI91-18 (Feb. 22, 1991)..... p. All.
Missouri:
MO91-1 (Feb. 22, 1991)..... p. 651, pp. 653-673d.
Nebraska:
NE91-1 (Feb. 22, 1991)..... p. All.
NE91-2 (Feb. 22, 1991)..... p. All.
NE91-3 (Feb. 22, 1991..... p. All.
NE91-5 (Feb. 22, 1991)..... p. All.
NE91-10 (Feb. 22, 1991)..... p. All.
NE91-11 (Feb. 22, 1991)..... p. All.

Volume III

California:
CA91-2 (Feb. 22, 1991)..... p. All.
CA91-4 (Feb. 22, 1991)..... p. All.
Oregon:
OR91-1 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of July 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-17930 Filed 7-30-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-27,129; TA-W27,130]

Cricketeer Manufacturing Co., Harrodsburg, KY; Joseph & Feiss Co.; Cleveland, OH.; Negative Determination Regarding Application for Reconsideration

By an application dated July 16, 1992, the Amalgamated Clothing & Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 18, 1992 and was published in the **Federal Register** on June 30, 1992 (57 FR 29100).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the workers met the increased import criterion for men's and boys' wool suits.

The union is right in its contention that the workers met the aggregate import test. The Department's use of a broader import category (men's and boys' suits) accounts for the differences in data. However, these differences have no bearing on the decision since the Department in its original investigation conducted a survey of Cricketeers and Joseph & Feiss' major declining customers to determine whether increased imports contributed importantly to declines in sales or production and employment at the subject firms.

The Department's survey of Cricketeer and Joseph & Feiss' major declining customers shows that they did not decrease their purchases of men's wool suits and sportscoats from the subject firms in 1991 compared to 1990 or in the first quarter of 1992 compared to the same period in 1991 while increasing their reliance on imports during these same comparable periods.

Comments from the customers of the subject firms indicate that the market is soft for men's wool suits whether domestic or foreign because of the recession. Other customer comments indicate that family spending priorities changed during the recession from full fashion men's wool suits to more basic suits or just accessories (shirt and tie).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Wasington, DC, this 23rd day of July 1992.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-18165 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric Superabrasives (workers)	Worthington, OH	07/20/92	07/09/92	27,492	Superabrasives.
Major Electric Co., IncCo)	Odessa, TX	07/20/92	07/10/92	27,493	Provides electric power to oilwells.
Excellon Automation Co. (workers)	Torrance, CA	07/20/92	03/28/92	27,494	Printed circuit boards.
Maxwell House Coffee (workers)	Hoboken, NJ	07/20/92	06/07/92	27,495	Coffee.
Allied Signal Aerospace (workers)	Tempe, AZ	07/20/92	07/06/92	27,496	Commercial aerospace hardware and equipment.
New England Die Casting, Inc. (IAMAW)	West Haven, CT	07/20/92	07/10/92	27,497	Aluminum die castings.
General Motors, Truck and Bus Group (workers)	Shreveport, LA	07/20/92	07/06/92	27,498	Small pickup trucks.
George E. Failing Co. (workers)	Enid, OK	07/20/92	07/07/92	27,499	Oil well drilling equipment.
Damron Products (workers)	Butler, PA	07/20/92	07/07/92	27,500	Tea.
Online Resource Exchange, Inc. (company)	New Orleans, LA	07/20/92	07/06/92	27,501	Oil and gas services.
Online Resource Exchange, Inc. (company)	Houston, TX	07/20/92	07/06/92	27,502	Oil and gas services.
Garments Plus Co. (ILGWU)	Newark, NJ	07/20/92	07/06/92	27,503	Ladies' sportswear.
Coastal Oil and Gas Corp. (workers)	Houston, TX	07/20/92	06/21/92	27,504	Oil and gas.
Sayre Lingerie, Inc. (workers)	Sayre, PA	07/20/92	07/06/92	27,505	Ladies' lingerie.
DuWel Products, Inc. (IAMAW)	Hartford, MI	07/20/92	07/06/92	27,506	Finishing zinc die castings.
DuWel Products Inc. (IAMAW)	Bangor, MI	07/20/92	07/06/92	27,507	Raw aluminum and zinc die castings.
Miller-Holzwarth Div. (company)	Byesville, OH	07/20/92	07/10/92	27,508	Periscopes and windshields.
Shelton Welltools, Inc. (company)	Woodward, OK	07/20/92	07/09/92	27,509	Oil, gas well logging.
Shelton Welltools, Inc. (company)	Oklahoma City, OK	07/20/92	07/09/92	27,510	Oil, gas well logging.
Victor Fluid Power (company)	Granite Falls, MN	07/20/92	07/10/92	27,511	Hydraulic welded cyclinders.
Wilson Industries, Inc. (workers)	Tioga, ND	07/20/92	07/09/92	27,512	Sell oilfield products.
Kate Jung Designs (workers)	Syracuse, NY	07/20/92	07/02/92	27,513	Hair accessories, costume jewelry.
Baumfolder Corp. (workers)	Sidney, OH	07/20/92	07/09/92	27,514	Paper folding machines and bindery equipment.
Mewbourne Oil Co. (workers)	Midland, TX	07/20/92	07/02/92	27,515	Oil and gas exploration.
Transmission Systems, Inc. (workers)	Fort Stockton, TX	07/20/92	07/07/92	27,516	Crude oil recovery.
Arkla Exploration Co. (company)	Shreveport, LA	07/20/92	07/14/92	27,517	Oil, gas exploration production.
Axem Resources, Inc. (company)	Denver, CO	07/20/92	07/07/92	27,518	Oil and gas.
Axem Resources, Inc. (company)	Belfield, ND	07/20/92	07/07/92	27,519	Oil and gas.
Axem Resources, Inc. (company)	Gillette, WY	07/20/92	07/07/92	27,520	Oil and gas.
Axem Resources, Inc. (company)	Woodward, OK	07/20/92	07/07/92	27,521	Oil and gas.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Axem Resources, Inc. (company)	Arnett, OK	07/20/92	07/07/92	27,522	Oil and gas.
Axem Resources, Inc. (company)	Freedom, OK	07/20/92	07/07/92	27,523	Oil and gas.
Axem Resources, Inc. (company)	Welty, OK	07/20/92	07/07/92	27,524	Oil and gas.
Axem Resources, Inc. (company)	Pond Creek, OK	07/20/92	07/07/92	27,525	Oil and gas.
Axem Resources, Inc. (company)	Perry, OK	07/20/92	07/07/92	27,526	Oil and gas.
Axem Resources, Inc. (company)	Sapulpa, OK	07/20/92	07/07/92	27,527	Oil and gas.

[FR Doc. 92-18164 Filed 7-30-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,174]

Mertz, Incorporated, Ponca City, OK

Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Mertz, Incorporated, Ponca City, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,174; Mertz, Incorporated
Ponca City, Oklahoma (July 21, 1992).

Signed at Washington, DC, this 23d day of July 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18162 Filed 7-30-92; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of unemployment insurance benefits quality control annual reports for calendar year 1991.

SUMMARY: The purpose of this notice is to announce the availability of calendar year 1991 Quality Control (QC) Annual Reports of each State's Unemployment Insurance (UI) Program and indicate how they may be obtained.

DATES: The Federal digest will be available after July 31, 1992.

ADDRESSES: Copies may be obtained by writing to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., room S-4231, Washington, DC 20210. The digest and this notice contain a list of names and addresses of persons in each State who will provide the State report and clarifications upon request.

FOR FURTHER INFORMATION CONTACT: John Sharkey, Chief, Division of System Operations and Analysis, Office of Quality Control at 202-535-0656.

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on personal interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information from the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: Total UI benefit dollars paid to the population of claimants; size of the QC samples; and the percentages of proper payments, overpayments, and underpayments in the population estimated from the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

In addition, each State has published its Annual Report separately. Persons interested in specific State reports are encouraged to request copies from the individual States using the attached mailing list.

They should also request clarifications of the data from the States since law, policies, and procedures in each State vary considerably. The data cannot be used to draw comparisons among States.

Signed at Washington, DC, on July 16, 1992.

Roberts T. Jones,
Assistant Secretary of Labor for Employment and Training.

UI QC Annual Report, State Contacts, CY 1991

Alabama

Harris Cornett, Public Information Officer, Department of Industrial Relations, 649 Monroe Street, room 217, Montgomery, AL 36131, (205)242-8618.

Alaska

Karen Van Dusseldorp, Q.C. Data Analyst, P.O. Box 21149, Juneau, AK 99802-1149, (907)465-3000.

Arizona

Gwen Howe, UI Technical Support Manager, Department of Economic Security, P.O. Box 6123, Site 701B-4, Phoenix, AZ 85005, (602)542-3771.

Arkansas

Robert K. Morgan, Director, Unemployment Insurance, Employment Security Division, P.O. Box 2981, Little Rock, AR 72203, (501)682-3200.

California

Anita MacKenzie, Deputy Director, Communications Office, MIC 85, Employment Development, Department, P.O. Box 826880, Sacramento, CA 94280-0001, (916)654-9029.

Colorado

Wayne Drummond or Bill Lafferty, Colorado Dept. of Labor & Employment, Quality Control Unit, UI Staff Services, 251 East 12th Avenue, 3rd Floor, Denver, CO 80203, (303)620-4578.

Connecticut

Richard Ficks, Directors of Communications, Employment Security Division, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (203)566-4374.

Delaware

W. Thomas MacPherson, Director, Department of Labor, Division of Unemployment Insurance, P.O. Box 9029, Newark, DE 19714-9029, (302)368-6730.

District of Columbia

Roberta Bauer, Assistant Director, Compliance & Ind. Monitoring Staff, DC Dept. of Employment Services, 500 "C" Street, NW, room 511, Washington, DC 20001, (202)639–1206.

Florida

James M. Everington, QC Supervisor, Florida Dept. Labor & Emp. Security, Caldwell Building, room 106, Tallahassee, FL 32399–0209, (904)487–3448.

Georgia

Al Scott, Commissioner, Georgia Department of Labor, 148 International Blvd., NE., Suite 600, Atlanta, GA 30303, (404)656–3011.

Hawaii

Douglas Odo, U.I. Administrator, Dept. of Labor & Ind Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813, (808)548–6951.

Idaho

Dale Edstrom, QC Research Analyst, Idaho Department of Employment, 317 Main Street, Boise, ID 83735, (208)334–6285.

Illinois

Joseph Wojcik, Department of Employment Security, One Congress Center, QC Unit, room 301, 401 South State Street, Chicago, IL 60605, (312)793–1175.

Indiana

Robert Shade, Director of Integrity Programs, Department of Workforce Development, IN Dept. of Emp. & Training Services, 10 North Senate Avenue, Indianapolis, IN 46204, (317)232–7680.

Iowa

Larry Venenga, Q.C. Supervisor, Iowa Dept. of Employment, Services, 1000 East Grand Avenue, Des Moines, IA 50319, (515)281–8398.

Kansas

Joseph Ybarra, Q.C. Supervisor, 401 SW Topeka Blvd., Topeka, KS 66603, (913)296–4077.

Kentucky

Thomas DeName, Director, Div. of Unemployment Insurance, 275 East Main Street, 2nd Floor, East, Frankfort, KY 40621, (502)564–5283.

Louisiana

Marianne Sullivan, UI Claims Coordinator, LA Dept. of Employment & Training, P.O. Box 94094, Baton Rouge, LA 70804–9094, (504)342–7103.

Maine

Gail Thayer, U.I. Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207)289–2316.

Maryland

Thomas Wendel, Executive Director, Unemployment Insurance Division, Dept. of Econ. & Emp. Development, 1100 North Eutaw Street, Baltimore, MD 21201, (301)333–5306.

Massachusetts

Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Boston, MA 02114, (617)727–6556.

Michigan

Carol Haupt, Bureau of U.I., Employment Security Commission, 7310 Woodward Avenue, Detroit, MI 48202, (313)876–5465.

Minnesota

Bob Dockendorf, Minnesota Dept. of Jobs & Training, QC Unit, 2nd Floor, 390 North Roberts Street, St. Paul MN 55101, (612)297–3456.

Mississippi

Merrill Merkle, Mississippi Employment Security, Commission, P.O. Box 1699, Jackson, MS 39215–1699, (601)961–7764.

Missouri

Tom Deuschle, Director, Missouri Division of Emp. Security, P.O. Box 59, Jefferson City, MO 65104, (314)751–3976.

Montana

Robert R. Jensen, Administrator, Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406)444–2723.

Nebraska

Allan Amsberry, UI Director or Don Gammill, UI Program Evaluation, Administrator, P.O. Box 94600, Lincoln, NE 68509–4600, (402)471–9000.

Nevada

Karren Rhodes, Public Information Officer, NV Employment Security Department 500 East Third Street, Carson City, NV 89713, (702)885–4620.

New Hampshire

Robert Dorsch, Assistant to the Commissioner, Dept. of Employment Security, 32 South Main Street, Concord, NH 03301, (603)224–3311.

New Jersey

Charles G. Davis, Asst. Commissioner for Employment, Security & Training, New Jersey Dept. of Labor, CN 058, Trenton, NJ 08625–0058, (609) 984–5666.

New Mexico

Betty Boyden-Campbell, Q.C. Supervisor, New Mexico Department of Labor, 401 Broadway N.E., P.O. Box 1928, Albuquerque, NM 87103, (505) 841–8435.

New York

Charles G. Kilb, Director, Division of Audit & Compliance, NY State Department of Labor, State Office Campus, building 12-room 261, Albany, NY 12240, (518) 457–0284.

North Carolina

Preston L. Johnson, UI Director, Employment Security Comm. of NC, P.O. Box 25903, Raleigh, NC 27611, (919) 733–3121.

North Dakota

Lyle Holverson, Job Service North Dakota, P.O. Box 1537, Bismarck, ND 58502, (701) 224–2825.

Ohio

Gay M. Gilbert, Director, Unemployment Compensation Division, Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, OH 43216, (614) 466–9756.

Oklahoma

Terry McHale, Program Chief, Oklahoma Employment Security Comm., Will Rogers Memorial Office Bldg., Oklahoma City, OK 73105, (405) 557–7206.

Oregon

Michelle Kennedy, Communications, Manager, Oregon Employment Division, 875 Union Street NE., room 303, Salem, OR 97311, (503) 378–3216.

Pennsylvania

Jack Rudy, Acting Director, Bureau of Unemployment Compensation, Benefits and Allowances Division, Department of Labor & Industry, 7th & Forster Streets, room 415, Harrisburg, PA 17121, (717) 787–3547.

Puerto Rico

Vilma Letecia Alvarez, Assistant Secretary of Labor, Puerto Rico Dept. of Labor, and Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918, (809) 754–2131.

Rhode Island

Marvin Perry, Deputy Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648.

South Carolina

R. Michael Baker, U.I. Director, South Carolina Employ. Security, Comm., P.O. Box 995, Columbia, SC 29202, (803) 737–2400.

South Dakota

Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 622–2005.

Tennessee

Ann Ridings, TN Department of Employment Security, 10th Floor, Volunteer Plaza Bldg., 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190.

Texas

James Jackson, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2661 or Bert West, QC Supervisor, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2394.

Utah

Terry Burns, Director, Unemployment Insurance, Department of Employment Security, 174 Social Hall Avenue, P.O. Box 11249, Salt Lake City, UT 84147, (801) 533–2201.

Vermont

Robert Herbst, Quality Control Chief, Dept. of Employment & Training, P.O. Box 488, Montpelier, VT 05602, (802) 229–0311.

Virginia

F.W. Tucker, IV, Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032.

Washington

Marie Brillante, Assistant Commissioner, UI, WA Employment Security Department, Employment Security Bldg., 4th Floor, Olympia, WA 98504–5311, (206) 753–5120.

West Virginia

Andrew Richardson, Commissioner, Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2629.

Wisconsin

Chet Frederick, Department of Industry, Labor, and Human Relations, Quality Control Unit, P.O. Box 7905, Madison, WI 53707, (608) 266–8260.

Wyoming

Beth Nelson, Administrator, Unemployment Insurance Administration, P.O. Box 2760, Casper, WY 82602, (307) 235–3254.

[FR Doc. 92–17852 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–57; Exemption Application No. D–8955, et al.]

Grant of Individual Exemptions; Cisco Systems, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Cisco Systems, Inc., Located in Menlo Park, California

[Prohibited Transaction Exemption 92–57; Exemption Application No. D–8955]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a loan (the Loan) by Cisco Systems, Inc. (the Employer) to the Cisco Systems, Inc. 401(k) Plan (the Plan), which is sponsored by the Employer, with respect to group annuity contract GA 07049–0000 (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the Plan's potential repayment of the Loan (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) no interest and/or expenses are paid by the Plan, (c) the Loan is made only in lieu of payments due from Mutual Benefit with respect to the accumulated book value of the GAC at the time of the Loan, (d) the Repayments are restricted to the amounts, if any, paid to the Plan by Mutual Benefit or other responsible third parties with respect to the GAC (the GAC Proceeds), (e) the Repayments do not exceed the total amount of the Loan, and (f) the Repayments are waived to the extent the Loan exceeds the GAC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992 at 57 FR 24819.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Equitable Life Assurance Society of the United States (Equitable) and Equitable Real Estate Investment Management, Inc. (EREIM)

[Prohibited Transaction Exemption 92–58; Exemption Application No. D–8708]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the

sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The lease (the Lease) of 16,560 square feet of office space and 1,215 square feet of storage space in One Bush Plaza, a commercial office building located in San Francisco, California, by the Asset Enhancement Fund (AEF), a pooled separate account established by Equitable, to EREIM, or to the renewal of the Lease for an additional term not in excess of five years (the Lease Renewal provided that: (a) The Lease and the Lease Renewal are for a limited term; (b) the terms of the Lease and the Lease Renewal are negotiated and approved by a qualified independent fiduciary who determines that the terms of the transactions are no less than fair market value and at least as favorable to AEF as the terms would have been in arm's length transactions between unrelated parties; and (c) the independent fiduciary continues to monitor the Lease and the Lease Renewal on behalf of AEF.

EFFECTIVE DATE: This exemption will be effective April 27, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992 at 57 FR 24822.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Anderson of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Society National Bank, Located in Cleveland, Ohio

[Prohibited Transaction Exemption 92-59; Exemption Application No. D-9064]

Correction

The Proposed Exemption was incorrectly numbered D-9046 in the Federal Register of Friday, May 29, 1992. The correct Application Number should have been D-9064.

Exemption

The sanctions resulting from the application of section 4974 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by the Society National Bank, or any of its affiliates (collectively, the Bank), from the Emblem Fund (Emblem), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser for Emblem, in connection with the investment by certain individual retirement accounts (IRAs) and H.R. 10 plans (Keoghs) for which the Bank serves as a fiduciary, provided that the following conditions are met:

(a) No sales commissions are paid by the IRAs or the Keoghs in connection with the purchase or sale of shares of Emblem and no redemption fees are paid in connection with the sale of shares by the IRAs or Keoghs to Emblem;

(b) Each IRA or Keogh receives a rebate, in the form of an addition to income in the amount of such IRA's or Keogh's proportionate share of the reduction in net asset value of the investment brought about by the payment of the investment management fee charged to Emblem by the Bank. This addition to income will be transferred to the IRA or Keogh account on the same day as the reduction in value brought about by the payment of the investment advisory fee;

(c) A second fiduciary (the Second Fiduciary), who is independent of and unrelated to the Bank, receives full written disclosure of information including: (i) current prospectuses for each Emblem portfolio, and (ii) a statement describing the fee structures of the Bank as trustee, of the Bank as investment advisor to Emblem, and of Emblem. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the IRA or Keogh in Emblem, and the fees to be paid by Emblem to the Bank;

(d) The authorization referred to in paragraph (c) is terminable at will by the IRA or Keogh, without penalty to the IRA or Keogh, upon receipt by the Bank of written notice of termination. Full written disclosure of the information described in paragraph (c), along with a form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less often than annually. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the IRA or Keogh, without penalty to the IRA or Keogh, upon receipt by the Bank of written notice from the Second Fiduciary; and

(ii) Failure to return the form will result in continued authorization of the Bank to engage in the transactions described in paragraph (c) on behalf of the IRA or Keogh.

(e) All dealings between the IRAs or Keoghs and Emblem are on a basis no less favorable to the IRAs and Keoghs than dealings with other shareholders of Emblem.

FOR FURTHER INFORMATION CONTACT: Mr. S.J. Ryan of the Department, telephone (202) 523-8671. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-18191 Filed 7-30-92; 8:45 am]

BILLING CODE 4510-29-M

[Exemption Application No. D-8737]

Withdrawal of Notice of Proposed Exemption Involving the Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Ophthalmic Money Purchase Plan) Located Lansdale, PA

In the **Federal Register** dated January 27, 1992 (57 FR 3068), the Department of labor published a notice of proposed exemption (the Notice) from the

prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The Notice concerned the proposed sale by the Ophthalmic Money Purchase Plan to TJS Realty, a party in interest, of a 50 percent tenant-in-common interest in certain improved real property (the Property), for the total cash consideration of $555,250.

In a comment letter of February 25, 1992, the applicants' representative informed the Department of a change to the Notice. Specifically, the applicant's representative stated that the Ophthalmic Money Purchase Plan's 50 percent tenant-in-common interest in the Property, as described in the Notice, would be converted into a fee simple interest in one of two condominium units that would be partitioned from the Property prior to the proposed sale. The revised proposed transaction would then be described as a sale of a fee simple interest in a condominium by the Ophthalmic Money Purchase Plan to TJS Realty in lieu of a sale of a 50 percent tenant-in-common interest in the Property as published in the Notice.

Due to the material nature of this change, the Department has determined to withdraw this notice of proposed exemption from the **Federal Register**. Accordingly, this notice of pendency is hereby withdrawn.

Signed at Washington, DC this 28th day of July, 1992.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-18190 Filed 7-30-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement to Help Administer Site Visits to State and Regional Arts Agencies

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to assist the Endowment's States and Regional Program in the administration and coordination of on-site evaluations to assess projects supported by the Program and in connection with the review of applications. Duties include disbursement of funds to evaluators, making travel arrangements, maintaining records, and submitting reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92-10 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92-10 is scheduled for release approximately August 24, 1992 with proposals due on September 23, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92-18172 Filed 7-30-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

New Standard Technical Specifications (Proof and Review); Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) previously noticed the availability of five draft reports of new standard technical specifications (STS) that were issued for comment in January 1991 (56 FR 5430). The NRC has revised the STS in response to the comments received and following public meetings with the utility owners groups. The NRC issued the updated STS for proof and review and has scheduled to issue them for trial use as Revision 0 in September 1992. Copies of the proof-and-review version of the STS have been placed in the NRC public document room.

The vendor-specific STS are as follows:

NUREG-1430, "Standard Technical Specifications, Babcock and Wilcox Plants"

NUREG-1431, "Standard Technical Specifications, Westinghouse Plants"

NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants"

NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4"

NUREG-1434, "Standard Technical Specifications, General Electric Plants, BWR/6"

The NRC staff has established an electronic bulletin board system (BBS) as a public service for anyone that wishes to obtain copies of electronic files of the STS. The NRC prepared the STS using WordPerfect, Version 5.1, word processing software and has placed them on the BBS in compressed form using "ZIP" data compression software to reduce the time required to download the files. The NRC BBS may be reached by telephone at (301) 504-1178. Access to the BBS is available using a personal computer and modem with any standard communication software package. The BBS operates at up to 2400 Baud with communication parameters set at 8 bits, no parity, and one stop bit (8-N-1). This service is on line 24 hours a day. The system operators are Tom Dunning and Chris Hoxie. They can be reached by (voice) telephone at (301) 504-1189 and 504-3138, respectively, if assistance is needed.

Copies of the proof-and-review version of the STS are also available for inspection, or copying for a fee, in the NRC Public Document Room, the Gelman Building—room LL6 (Lower Level), 2120 L Street, NW., Washington, DC 20555. Requests for copies may be made by mail to the NRC Public Document Room, by facsimile at (202)-634-3343, or by telephone (202)-634-3273. Those requesting copies should list the STS by number and title as noted above.

FOR FURTHER INFORMATION CONTACT: Mark Reinhart, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504-3139.

Dated at Rockville, Maryland, this 24th day of July, 1992.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, Technical Specifications Branch, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18118 Filed 7-30-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-262]

Order Approving Decommissioning Plan and Authorizing Decommissioning

In the matter of Brigham Young University (Brigham Young University L-77 Research Reactor).

In the matter of Brigham Young University (Brigham YUoung University L–77 Research Reactor).

By application dated June 28, 1990, as supplemented on July 2, 1991 and March 9, 1992, Brigham Young University (the licensee or BYU) requested authorization to decommission and dismantle the BYU L–77 Research Reactor, Facility License No. R–109, located on the licensee's campus in Provo, Utah, and to dispose of the component parts, in accordance with the Decommissioning Plan for the L–77 Research Reactor (Decommissioning Plan) submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on August 1, 1991, (56 FR 36851). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that the decommissioning, dismantling and disposal of component parts as stated in the licensee's Decommissioning Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action (57 FR 32824). Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby authorized to decommission and dismantle the BYU L–77 Research Reactor facility covered by Facility License No. R–109, as amended, and dispose of the component parts in accordance with its Decommissioning Plan, as amended, and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the Decommissioning Plan and in the Commission's guidance which is set forth in the staff's Safety Evaluation. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R–109.

For further detail with respect to this action, see (1) the licensee's application for authorization to decommission and dismantle the facility, dispose of component parts, and terminate Facility License No. R–109, dated June 28, 1990, as supplemented; (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained by request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland, this 23d of July 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18119 Filed 7–30–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station Unit No. 1; Exemption

I.

Niagara Mohawk Power Corporation (NMPC or the licensee) is the holder of Facility Operating License No. DPR–63, which authorizes operation of Nine Mile Point Nuclear Station Unit No. 1 (the facility or NMP1), at a steady-state reactor power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Oswego County, New York. The license provides among other things, that it is subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Appendix J to 10 CFR part 50 requires that primary reactor containments shall meet certain containment leakage test requirements. Among these are the requirements that containment isolation valves receive local leak rate tests (Type C) and the results of all of the Type C tests are to be added to the results of the Type B tests (i.e., containment penetrations) and the combined leakage rate shall be less than 0.60 La (maximum allowable containment leakage at calculated peak containment internal pressure during a design basis accident).

III.

By letter dated July 9, 1992, NMPC requested a revision to a schedular exemption which had been issued to NMPC on March 20, 1992. The March 20, 1992, schedular exemption had combined and extended, until startup from the fall 1994 refueling outage, two schedular exemptions issued to NMPC on October 17, 1988, and August 29, 1989. The October 17, 1988, August 29, 1989, and March 20, 1992, exemptions had provided NMP1 with temporary relief from the leakage requirements of 10 CFR part 50, appendix J for eight containment isolation valves (shutdown cooling isolation valves 38–01, 38–02, 38–12, and 38–13 and emergency condenser condensate return line valves 39–03, 39–04, 39–05, and 39–06). Extension of the exemptions from the 1992 refueling outage to the 1994 refueling outage was determined acceptable in the March 20, 1992, exemption. As was noted in the October 17, 1988, August 29, 1989, and March 20, 1992, exemptions, these valves will require modifications or replacements to meet the leakage requirements of 10 CFR part 50, appendix J.

The licensee's July 9, 1992, letter (1) requested that two emergency condenser condensate return line valves (39–05 and 39–06) be deleted from the March 20, 1992, exemption since these valves will be tested prior to startup to ensure their compliance with the leakage requirements of 10 CFR part 50, appendix J, and (2) provided a revised basis for the requested exemption for the two emergency condenser condensate return line check valves (39–03 and 39–04. Due to the duration of the forced outage which began on May 1, 1992, the refueling outage previously scheduled to begin in the fall of 1994 has been rescheduled to begin in early 1995. Therefore, the licensee's July 9, 1992, letter also requested that the duration of the exemption for the shutdown cooling isolation valves (38–01, 38–02, 38–12, and 38–13) and the emergency condenser condensate return line check valves (39–03 and 39–04) be extended until startup from the refueling outage now scheduled to begin in early 1995.

IV.

The licensee's July 9, 1992, letter provided a revised basis for the exemption issued on March 20, 1992.

The March 20, 1992, exemption combined and extended the October 17, 1988, and August 29, 1989, exemptions until startup from the 1994 refueling outage. The evaluations prepared by the NRC staff for the October 17, 1988, and August 29, 1989, exemptions were still valid; therefore, extension of these exemptions was determined to not cause undue risk to the public health and safety. Furthermore, it was determined that these extensions would reduce occupational exposures and the volume of radwaste to be generated. Occupational exposures would be reduced by delaying the modifications until the 1994 refueling outage when a chemical decontamination of the reactor coolant system will be performed. Radwaste volumes will be minimized by delaying the modifications until the 1994 refueling outage since only a single drain down of the reactor vessel will then be required.

The forced outage which began on May 1, 1992, due to thermal stress cracking in the emergency condenser condensate return line valves, required access to these valves. The licensee expedited delivery of replacement check valves for the 39–03 and 39–04 check valves. However, testing of the replacement check valves at the vendor's facility determined that the replacement valves would not meet system design specifications. As a result, replacement check valves meeting 10 CFR part 50, appendix J leakage requirements and system design specifications are not available for installation. Therefore, check valves 39–03 and 39–04 were removed from the emergency cooling system, repaired to restore them to original design standards, and reinstalled in the emergency cooling system. Since these check valves were not designed for low pressure testing, they will require future modifications or replacements to meet the leakage requirements of 10 CFR part 50, appendix J.

The licensee also obtained access to valves 39–05 and 39–06 during the forced outage. These valves were refurbished during the forced outage to ensure that the summation of leakage from these valves and other containment penetrations will meet the leakage requirements of 10 CFR part 50, appendix J. Therefore, these two valves (39–05 and 39–06) have been deleted from the March 20, 1992, exemption.

The basis on which the NRC staff granted the March 20, 1992, exemption extension was to allow the modifications to the valves to be performed coincident with reactor coolant system decontamination and reactor vessel drain down during the 1994 refueling outage. Although access to the emergency condenser condensate return line check valves was obtained during the forced outage which began on May 1, 1992, the same check valves (not designed for low pressure testing) were installed after repairs were made since suitable replacement check valves are not available. Additional time is required to obtain suitable replacement check valves.

As a result of component cracking due to thermal fatigue discovered the forced outage which began on May 1, 1992, the licensee has installed additional thermocouples to monitor the emergency condenser condensate return lines to determine the root cause of the thermal cracking. Analysis of data collected during the remainder of the current fuel cycle will not be completed in time to support resolution of this issue (possible relocation of the check valves or installation of a different type of valve) prior to the January 1993 refueling outage. Delaying modifications to resolve the thermal fatigue issue and delaying installation of valves which will meet the leakage requirements of 10 CFR part 50, appendix J will permit both issues to be resolved in a single modification which is expected to result in an occupational exposure saving of 50–75 person-rem. Therefore, since the exemption would provide only temporary relief from the testing requirements of appendix J to 10 CFR part 50 and since NMPC has made good faith efforts to comply with the leak testing requirements, the NRC staff believes that special circumstances exist that warrant extending the current exemption until startup from the 1995 refueling outage.

Other information provided in the licensee's submittals for the October 17, 1988, August 29, 1989, and March 20, 1992, exemptions remains valid.

V.

On the basis of the above evaluation, the NRC staff concludes that the requested revision to and extension of the temporary, schedular exemption from the Type C testing requirements of appendix J to 10 CFR part 50 for emergency condenser condensate return line valves 39–03 and 39–04 and shutdown cooling isolation valves 38–01, 38–02, 38–12, and 38–13 is justified and should be granted. The technical basis supports a revision to and extension of the March 20, 1992, exemption until restart of NMP1 from the 1995 refueling outage. The valves will then be included in the 0.6 La acceptance criteria for Type B and C tests.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the revision to the exemption requested by the licensee's letter dated July 9, 1992, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and that special circumstances are present as set froth in 10 CFR 50.12(a)(2)(v).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this Exemption will have no significant impact on the environment (July 21, 1992, 57 FR 32238).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of July 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18120 Filed 7–30–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mary Hill, Executive Personnel Division, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 (202) 606–1590.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

The following have been selected as regular members of the Performance Review Board of the Office of Personnel Management:

Steven R. Cohen (Chair), Regional Director, Chicago Region.
Frances A. Sclafani, Associate Director, Investigations Group.
Claudia Cooley, Associate Director, Personnel Systems and Oversight Group.
Patricia W. Lattimore, Associate Director, Administration Group.
Leonard R. Klein, Associate Director, Career Entry Group.
Curtis J. Smith Associate Director, Retirement and Insurance Group.
Dona Wolf, Director, Human Resources Development Group.

The following have been selected as ad hoc members of the Performance Review Board of the Office of Personnel Management:

Anthony F. Ingrassia, Chairman, Federal Prevailing Rate Advisory Committee.
Frank D. Titus, Deputy Associate Director, Retirement and Insurance Group.

[FR Doc. 92-18065 Filed 7-30-92; 8:45 am]
BILLING CODE 6325-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Snowcreek, Summit County, UT

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Snowcreek located in Park City, Summit County, Utah, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 29, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Ms. Beth Shannahan, Resolution Trust Corporation, Transamerica Real Estate Management, 2255 North 44th Street, suite 255, Phoenix, AZ 85008, (602) 275-4662, FAX (602) 275-4316.

SUPPLEMENTARY INFORMATION: The Snowcreek property consists of approximately 52 acres of undeveloped land and is located at the intersection (northeast corner) of Highways 224 and 228, Park City Utah. Its location in Park City is approximately 25 miles east of downtown Salt Lake City via interstate 80. The site contains wetlands, undeveloped floodplains, and a Hillside Reserve that is maintained in open space. The property is contiguous with the Park City Municipal Golf Course and other lands managed by Park City as a Hillside Reserve. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is located on the eastern front of the Wasatch Mountain Range and Snow Creek flows through the property from south to north. The site contains about 7.5 acres of wetlands, 6 acres of floodplain, and 19.5 acres of the property is maintained in open space as a Hillside Reserve.

Property size: Approximately 52 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 29, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 29, 1992, to Ms. Beth Shannahan at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Snowcreek

Federal Register Publication Date: July 31, 1992.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101-591, Section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Resolution Trust Corporation.

Dated: July 27, 1992.

William J. Tricarico,
Assistant Secretary.

[FR Doc. 92-18154 Filed 7-30-92; 8:45 am]
BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; North Point, Jefferson County, CO

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as North Point, located in the City of Westminster, Jefferson County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or a portion of the property may be mailed or faxed to the RTC until October 29, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Craig Tryon, Resolution Trust Corporation, Capitol Federal Savings, 2625 South Colorado Boulevard, Denver, CO 80222, (303) 691-1003, Fax (303) 756-3132.

SUPPLEMENTARY INFORMATION: The North Point property is located northwest of the City of Denver, in Westminster, Colorado. The southern portion of the property is crossed by 104th Avenue which intersects State Highway 36 (Denver/Boulder Turnpike) running along the western portion of the property. The property contains wetlands and is crossed by Big Dry Creek which is lined with riparian vegetation. The site is contiguous with lands managed by the City of Westminster for public open space, park, and recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441A-3).

Characteristics of the property include: The property is undeveloped and consists of approximately 145.877 acres. The topography is gently rolling and the site appears to have been used as pasture and is covered with grasses and forbs. The foothills of the Rocky Mountains dominate the western vistas from the property.

Property size: Approximately 145.877 acres.

Written notice of serious interest in the purchase or other transfer of all or a portion of the property must be received on or before October 29, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of all or a portion of the property must be submitted by October 29, 1992, to Mr. Craig Tryon at the above **ADDRESSES** and in the following form: Notice of Serious Interest, RE: North Point, Federal Register Publication Date: July 31, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101-591, Section 10(b)(2), (12 U.S.C. 1441A-3(B)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 27, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-18153 Filed 7-30-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Equitable Co's, Inc.
Common Stock, $.01 Par Value (File No. 7-8844)
Hallwood Group, Inc.
Common Stock, $.10 Par Value (File No. 7-8845)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18086 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Carolco Pictures
Common Stock, $.01 Par Value (File No. 7-8846)
English China Clays Plc
American Depository Receipt (rep. 3 ord. shrs. 25p) (File No. 7-8847)
Excelsior Income Shares, Inc.
Common Stock, $.01 Par Value (File No. 7-8848)
First USA, Inc.
Common Stock, $.01 Par Value (File No. 7-8849)
Hubbell, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-8850)
Orion Capital Corp.
$2.125 Cum. Conv. Exch. Pfd., $1.00 Par Value (File No. 7-8851)
Pacific American Income Shares, Inc.
Common Stock, $.01 Par Value (File No. 7-8852)
Portec, Inc.
Common Stock, $1.00 Par Value (File No. 7-8853)
Reliance Electric Co.
Class A Common Stock, $.01 Par Value (File No. 7-8854)
Sequa Corp.
Class A Common Stock, No Par Value (File No. 7-8855)
Syborn Corp.
Common Stock, $.01 Par Value (File No. 7-8856)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18079 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Viacom, Inc.
Common Stock, $.01 Par Value (File No. 7-8814)
Agricultural Minerals Company L.P.
Common Units, No Par Value (File No. 7-8815)
Oxford Industries
Common Stock, $1 Par Value (File No. 7-8816)
Long Island Lighting Company
Pfd Stock $7.95 Series AA Cum., $25 Par Value (File No. 7-8817)
Equitable Companies, Inc.
Common Stock, $.01 Par Value (File No. 7-8818)
Enquirer Star Group, Inc.
Warrants (File No. 7-8819)

MuniYield New York Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–8820)
MuniYield Quality Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8821)
MuniYield California Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8822)
General Motor Corporation
Dep. Shares, Pfd Stock, $0.10 Par Value (File No. 7–8823)
Kasler Corporation
Common Stock, No Par Value (File No. 7–8824)
Western Gas Resources
Common Stock, $.10 Par Value (File No. 7–8825)
Ground Round Restaurants, Inc.
Common Stock, No Par Value (File No. 7–8826)
Latin America Dollar Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8827)
Nuveen Premium Income Municipal Fund, Inc. 2
Common Stock, $.01 Par Value (File No. 7–8828)
Nuveen Select Tax Free Income Portfolio 3
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8829)
GTECH Holding Corporation
Common Stock, $.01 Par Value (File No. 7–8830)
American Strategic Income Portfolio, Inc. II
Common Stock, $.01 Par Value (File No. 7–8831)
Greater China Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8832)
Jardine Fleming China Region Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8833)
Abex, Inc.
Common Stock, $.01 Par Value (File No. 7–8834)
Enterprise Oil Plc
American Depository Shares, Series A One Cum. Dollar Preference Share (File No. 7–8835)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18089 Filed 7–30–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25591]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

Dated: July 24, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 17, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Sawyer Gas of Jacksonville, Inc., et al. (31–870)

Sawyer Gas of Jacksonville, Inc. ("Sawyer") and Tri City Propane and Gas Company, Inc. ("Tri City"), 8801 South Yale Avenue, suite 310, Tulsa, Oklahoma 74137, wholly owned subsidiary companies of Heritage Propane Corporation, have filed an application under section 2(a)(4) of the Act for an order declaring them not to be gas utility companies.

Section 2(a)(4) defines a gas utility company as "any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers * * *) of natural or manufactured gas for heat, light, or power." That section also provides that the Commission may declare a company operating such facilities not to be a gas utility company if it "finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of [the Act] * * *."

Sawyer engages in the sale of propane in the State of Florida, and Tri City engages in the sale of propane in the States of New Mexico and Arizona, to retail customers in enclosed portable containers and through metered systems. The metered gas sold by Sawyer and Tri City represent sales made through piped systems that are supplied by delivering propane to large above-ground storage tanks that generally feed a particular mobile home park or subdivision. Sawyer and Tri City seek a declaration of non-utility status by reason of their asserted small percentage of sales through piped systems with meters.

To qualify for an exemption under section 2(a)(4), the Commission looks to metered gas sales to determine whether the amount of gas distributed at retail is significant. During fiscal year 1992, Sawyer sold 4.012 million gallons of propane and had revenues of $6.953 million. Piped sales represented 12.59% of the gallons sold and 13.45% of the revenues. During fiscal 1991, Tri City sold .626 million gallons of propane and had revenues of $525,724. Piped sales represented 4.04% of gallons sold and 3.69% of revenues.

The applicants assert that they are highly regulated by the states and the federal government in the areas of safety and transportation, but not as to price. They state that their propane activity does not constitute utility services under Florida, New Mexico or Arizona law.

Eastern Utilities Associates, et al. (70–7287)

Eastern Utilities Associates ("EUA"), a registered holding company, and EUA Cogenex Corporation ("Cogenex"), its nonutility subsidiary company, both of P.O. Box 2333, Boston, Massachusetts 02107, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(c), 12(f), and 13 of the Act

and rules 42, 45, 87, 90 and 91 thereunder.

By order dated December 19, 1986 (HCAR No. 24273) (the "Order"), EUA was authorized to acquire all of the issued and outstanding stock of a company, now known as Cogenex, engaged in the provision of energy management services to institutional customers. Cogenex evaluates a customer's site and advises the customer as to what steps should be taken to reduce energy consumption. Modifications may include building automation, lighting modifications, boiler replacement and heat recovery. Cogenex usually funds the initial cost of the recommended changes and is repaid through a contract based on calculating the energy savings with reference to a prescribed base year.

Cogenex also participates in various installed self-generation projects whereby an electric generator sited on the customer's premises supplies both heat and electricity, displacing a portion of the customer's retail electric consumption. The application states that any self-generation project which Cogenex undertakes will be certified as a qualifying cogeneration facility ("QF") under the Public Utility Regulatory Policies Act of 1978 and the regulations thereunder.

Cogenex also acts as an energy services contractor for several electric utilities to assist them in meeting their conservation and demand reduction goals. Finally, Cogenex provides training to its customers in the proper use and maintenance of energy equipment.

The Order conditions the conduct of Cogenex's business as follows:

> [Cogenex] will expand its operations outside of New England only if doing so will permit to utilize better the personnel and equipment already dedicated to the energy management services business and provided that the revenues of [Cogenex] attributable to customers located outside New England [the "Region"] remain less than the revenues attributable to customers located within that area [("50% Restriction")]. Cogenex now requests authorization to include New York as part of the Region and exclude all activities relating to QF's for purposes of determining compliance with the 50% Restriction.

Maine Yankee Atomic Power Company (70–7627)

Maine Yankee Atomic Power Company, Edison Drive, Augusta, Maine 04330, an indirect subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act.

By order dated July 18, 1989 (HCAR No. 24925), the Commission authorized Maine Yankee to borrow under a revolving credit agreement ("Credit Agreement") through August 31, 1992, in an aggregate principal amount not to exceed $50 million outstanding at any one time with maturities of from one day to ten years from the date of issuance.

Maine Yankee now proposes to: (1) Extend through August 31, 1995 its authorization to issue and sell promissory notes ("Notes") under the Credit Agreement in an aggregate principal amount not to exceed $50 million outstanding at any one time, and (2) to amend the Credit Agreement ("Proposed Amendment") in certain respects.

The Proposed Amendment would alter two of the four interest rate options provided for in the Credit Agreement, as follows: (1) If a European based rate is elected, the interest charge would increase from adjusted London Inter-Bank Offering Rate or other interbank market offering rate for U.S. dollars ("LIBOR") plus ⅜% to adjusted LIBOR plus ½%, for interest periods of 1, 2, 3 or 6 months (360 day basis); and (2) if a CD Rate is elected, the interest charge would increase from Adjusted CD Rate plus ½% to Adjusted CD Rate plus ⅝%, for interest periods of 30, 60, 90, or 180 days (360 day basis). The Proposed Amendment would also increase the bid loan fee payable to the Banks, in accordance with their pro rata commitments, on the aggregate principal amount of bid loans outstanding from ⅛% to 3/16% per annum.

Consolidated Natural Gas Company (70–7827)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act.

By order dated March 28, 1991 (HCAR No. 25283) ("Order"), the Commission authorized Consolidated, among other things, to borrow, from time-to-time through March 31, 1994, up to $300 million, pursuant to revolving credit agreements ("Credit Agreements") with the Chase Manhattan Bank acting for itself and as agent for eleven other banks. The loans made under the Credit Agreements may be either syndicated loans by a group of participating banks or money market loans made by individual participating banks.

Under the terms of the Credit Agreements, the bank loans may be in the form of revolving credits. Commitments under the Credit Agreements will commence as of the date thereof and will have an initial term expiring on the last business day in March of 1994. However, the Credit Agreements provided that on each anniversary date the term of the agreement can, at Consolidated's request with the approval of the banks, be extended for a period of one year. Consolidated, pursuant to such provision in the Credit Agreements, elected to extend the term of the Credit Agreement through March 31, 1995.

In connection with Consolidated's current extension and in anticipation of likely future extensions of the Credit Agreement, Consolidated now proposes to extend its authorization under the Order from March 31, 1994 to March 31, 1996. Any borrowing by Consolidated under such extended authorization will be subject to the same terms and conditions as authorized in the Order.

Consolidated Natural Gas Company (70–8013)

Consolidated Natural Gas Company ("CNG"), CNG Tower, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act, and Rule 50(a)(5) thereunder.

CNG proposes to issue and sell, through December 31, 1992, up to 4,600,000 shares of its authorized but unissued common stock, $2.75 par value ("Additional Stock"). It is anticipated by CNG that the proposed transaction will be structured to include the issuance and sale of a to-be-determined number of shares of Additional Stock: (i) To an underwriter(s) in the United States ("U.S. Underwriters"); (ii) to an international manager(s) ("Managers") outside the United States; and (iii) to such U.S. Underwriters or Managers to cover over-allotments (typically from 10% to 15% of the Additional Stock).

CNG states that the proceeds from the sale of the Additional Stock will be added to the treasury funds of CNG and subsequently used to finance, in part, capital expenditures of CNG and CNG's subsidiaries.

CNG requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Additional Stock. CNG states that it believes that the flexibility to match readily terms and conditions of the Additional Stock offer and sale with the changing demands of the market will contribute to its achieving lowest cost funding. CNG further states that the involvement of both U.S. Underwriters and Managers necessitates coordination between the two underwriting groups. Accordingly, CNG further requests

authorization to begin negotiations with U.S. Underwriters and Managers for the public offering of the Additional Stock. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18090 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

Dated: July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

North Canadian Oils, Ltd.
Common Stock, No Par Value (File No. 7-8836)

Automated Security Holdings Plc
American Depository Shares (each representing two ordinary shs of 10P each) (File No. 7-8837)

GTECH Holdings Corp.
Common Stock, $.01 Par Value (File No. 7-8838)

Charter Medical Corp.
(when issued), Common Stock, $.25 Par Value (File No. 7-8839)

Latin America Dollar Income Fund, Inc.
Comon Stock, $.01 Par Value (File No. 7-8840)

Nuveen Premium Income Municipal Fund, Inc. 2
Common Stock, $.01 Par Value (File No. 7-8841)

Nuveen Select Tax Free Income Portfolio 3
Shares of Beneficial Interest, Par Value $.01 (File No. 7-8842)

Patriot Global Div. Fund
Shares of Beneficial Interest, No Par Value (File No. 7-8843)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18094 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the federal safety laws and regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's argument in favor of relief.

Consolidated Rail Corporation

Waiver Petition Docket Numbers PB-90-2 and SA-90-4

The Consolidated Rail Corporation (Conrail) in conjunction with the Wheeling and Lake Erie Railway Company (W&LE) and the Norfolk Southern Corporation (NS) (on behalf of its operating subsidiaries) were granted conditional waivers of compliance with certain provisions of the Railroad Power Brakes and Drawbar Regulations (49 CFR part 232), under Docket No. PB-90-2, and the Safety Appliance Standards (49 CFR part 231), under Docket No. SA-90-4 (see notice of waiver petitions 55 FR 15095, April 20, 1990, for more detailed discussions of the Conrail petition and 56 FR 49817, October 1, 1991, for more detailed discussion of the W&LE petition).

The conditional waivers permitted NS RoadRailer trains to interchange with Conrail at Hagerstown, Maryland and with W&LE at Clairton, Pennsylvania for final destination to Portside or Kearny, New Jersey and return to the respective railroads. Conrail has once again petitioned the FRA for changes in the original routings granted in the conditional waivers of the RoadRailer trains over its lines. The railroad states, "As a result of changes in routing and traffic volume, Conrail now requests a Waiver of Compliance allowing the interchange of NS trains handling RoadRailer units to and from the following locations:

(1) From Hagerstown, Maryland for subsequent movement to Portside or Elizabeth, New Jersey; and

(2) From Bucyrus, Ohio via Altoona, Pennsylvania to Rutherford Yard, Harrisburg, Pennsylvania."

Conrail also advises the FRA that it no longer has any plans to receive RoadRailer trains from the W&LE, nor will either of the above referenced trains terminate at Kearny, New Jersey.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB-90-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 4, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 24, 1992.

Phil Oleksyzk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-18091 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Westinghouse Air Brake Company (WABCO) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

Westinghouse Air Brake Company

Waiver Petition Docket Number H–92–3

The Westinghouse Air Brake Company (WABCO) seeks a waiver of compliance with certain provisions of the Locomotive Safety Regulations (49 CFR part 229). WABCO is requesting a temporary waiver of compliance with § 229.29, for all locomotives equipped with their EPIC 3101 and 3102 Microprocessor Controlled Brakes operating in the United States. Section 229.29 stipulates that all brake valves must be cleaned, tested and inspected every 736 calendar days. On January 29, 1985, FRA granted approval for the 26–L type air brake equipment to be cleaned, inspected and tested every 1104 calendar days. The waiver requests that the EPIC brake valves be maintained at the same interval as the 26L brake.

The EPIC brake equipments combine certain pneumatic features of the 26L brake with microprocessor controls. The EPIC air valves consist of rubber diaphragm type pistons, spool valves with "O" rings and rubber seated check valves. This same construction and similar configuration is used in the 26L brake valves which have previously shown to be capable of extended service life. In addition, each locomotive equipped with the EPIC brakes has an air dryer in the main reservoir air supply system to remove moisture.

Prototype and early production models of the EPIC brake have been in controlled service for several years. FRA has not wished to impede the development of this state of the art equipment and has therefore not taken exception to its design. Functionally, the EPIC brake is equivalent to the 26L Type. To establish the reliability of the EPIC brake equipment, FRA proposes that all such equipment be operated under a test waiver for a period of three years to determine the optimum maintenance interval. The electronic portion of the brake differs from the pneumatic portion in that it has an indefinite service life, subject only to abnormal conditions such as voltage surges, loss of power, etc. These are random type failures rather than failures due to service life.

The EPIC 3101 brake utilizes valvular portions which are very similar to the 26L brake. The 26L equipment was adapted to the microprocessor. The EPIC 3102 is the second generation brake with the valvular portions being completely redesigned to simplify the entire system. It is expected the EPIC 3102 will supercede the EPIC 3101.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Sireet, SW., Washington, DC 20590. Communications received before September 4, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 24, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–18092 Filed 7–30–92; 8:45 am]

BILLING CODE 4910–06–M

[BS–AP–NO. 3170]

Wheeling and Lake Erie Railway Company; Public Hearing

The Wheeling & Lake Erie Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control system on the single and double main tracks of the Bellevue Line between CP Rex, milepost 184, near Rexford, Ohio and Yeomans West, milepost 54.8, near Bellevue, Ohio, a distance of approximately 129 miles.

This proceeding is identified as FRA Block Signal Application Number 3170.

The FRA has issued a public notice seeking comments of interested parties and is conducting a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Thursday, September 10, 1992, in City Council Chambers at City Hall, located at 218 Cleveland Avenue SW., in Canton, Ohio. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on July 24, 1992.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 92–18093 Filed 7–30–92; 8:45 am]

BILLING CODE 4910–16–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 27, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0144.

Form Number: IRS Form 2438.

Type of Review: Resubmission.

Title: Regulated Investment Company Undistributed Capital Gains Tax Return.

Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)(3)(D). IRS uses this information to determine the correct tax.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 hours, 39 minutes
Learning about the law or the form—35 minutes
Preparing and sending the form to the IRS—45 minutes

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 899 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 92–18150 Filed 7–30–92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Engraving and Printing

Privacy Act of 1974; Amendment to Existing System of Records Notice

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of Amendment to Privacy Act System of Records Notice, Treasury/BEP .021.

SUMMARY: The Bureau of Engraving and Printing (BEP) is making several amendments to the description of an existing system of records, Treasury/BEP .021, Investigative Files, to reflect: (1) The automation of the system of records; and (2) a change in the retention schedule of two categories of records.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on August 31, 1992, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT: Lawrence F. Zenker, Disclosure Officer, Bureau of Engraving and Printing, Room 321–12A, 14th and C Streets, SW., Washington, DC 20228, Telephone: (202) 874–2687.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of the Treasury reviewed all Privacy Act systems of records and published all systems notices on April 17, 1992. This publication affects only the notice for the system maintained by the Bureau of Engraving and Printing, Treasury/BEP .021.

Treasury/BEP .021, Investigative Files, is being amended to reflect that the system has been automated. As a consequence, changes are reflected in the storage description for this system. Additionally, changes have been made under "Retention and Disposal" because the retention schedule for this system of records has been increased.

* * * * *

Treasury/BEP .021

SYSTEM NAME:

Investigative Files—Treasury/BEP.

* * * * *

STORAGE:

File Folders, 3x5 Index Cards, 5x8 Index Cards, Loose-Leaf Binders, Ledgers, Recording tape, Computer Database Programs, and Microfiche.

* * * * *

RETENTION AND DISPOSAL:

Destroyed within 90 days following notification of an employee's death, or, within five years after separation or transfer of incumbent employee; or, five years after expiration of contractual relationship. Product Discrepancy Investigative Reports and Bank Letter Investigative Reports are retained indefinitely.

* * * * *

Dated: July 23, 1992.

David M. Nummy,

Assistant Secretary (Management).

[FR Doc. 92–18151 Filed 7–30–92; 8:45 am]

BILLING CODE 4840–01–M

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of application Packages for the 1993 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1993 Tax Counseling for the Elderly (TCE) Program is September 8, 1992.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program. Internal Revenue Service Management and Operations Branch (T:T:M) 1111 Constitution Ave., NW., room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, Management and Operations Branch (T:T:M) room 7207, Internal Revenue Service, 1111 Constitution Ave., NW., room 7207, Washington, DC 20224. The non-toll-free telephone number is: (202) 622–7664.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978, Pub. L. No. 95–600, 92 Stat. 12810, November 6, 1978. Regulations were published in the **Federal Register** at 44 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individual age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1993 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in § 21.006.

John J. Mannion,

Chief, Management and Operations Branch.

[FR Doc. 92–18059 Filed 7–30–92; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:33 a.m. on Tuesday, July 28, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818—Silverado Banking, Savings and Loan Association, Denver Colorado

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman William Taylor, and concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: July 28, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-18239 Filed 7-29-92; 10:05 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 4, 1992.

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Island Creek Coal Co. v. Roy Farmer et al,* Docket No. VA 91-31-C (Issues include whether the judge erred in concluding that Roy Farmer had good cause for filing out of time a complaint for compensation brought under 30 U.S.C. § 821.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: July 28, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-18325 Filed 7-29-92; 3:05 am]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 5, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED.

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any time carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18244 Filed 7-29-92; 10:23am]

BILLING CODE 6210-01-M

federal register

Friday
July 31, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 493 and 498

Clinical Laboratories Improvement Act Program; Accreditation and Exemption; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 493 and 498

[HSQ-181-F]

RIN 0938-AE62

Clinical Laboratories Improvement Act Program; Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of CLIA Exemption Under State Laboratory Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule permits HCFA to approve or disapprove accreditation organizations and State laboratory programs and thereby determine that laboratories accredited by a HCFA-approved private, nonprofit accreditation organization are deemed to meet the requirements set forth in 42 CFR part 493 of the regulations, which implement section 353 of the Public Health Service Act (PHSA) or, in the case of State laboratory programs, are exempt from the requirements. Section 353 of the PHSA was enacted by the Clinical Laboratories Improvement Act of 1967 (CLIA '67) and was amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

EFFECTIVE DATE: This rule is effective August 31, 1992, except for the definitions of "accredited laboratory", "CLIA-exempt laboratory", and "HCFA agent", found in § 493.2, which will be effective on September 2, 1992.

FOR FURTHER INFORMATION, CONTACT: Irene Gibson, (410) 966-6768.

SUPPLEMENTARY INFORMATION:

Background

Under section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967 (CLIA '67), laboratories engaged in testing specimens in interstate commerce had to meet Federal requirements established under the CLIA '67 program in order to become or remain licensed to engage in interstate commerce. HCFA established the requirements, called "conditions," and standards, and was responsible for assuring that they were met. The Federal conditions under the CLIA program for granting licenses to laboratories were similar to the conditions of participation or for coverage that a laboratory had to meet in order to participate in Medicare or Medicaid. Each condition was usually comprised of one or more standards, which enumerated activities, outcomes, or other requirements that, upon evaluation by HCFA, its agents, or a State survey agency under contract with HCFA, served as the basis for determining compliance with a particular condition. If the laboratory failed to comply with any CLIA condition, we initiated an adverse action to revoke, suspend or limit the laboratory's CLIA license.

Section 353(d)(2) of the PHSA, as enacted by CLIA '67, stated that the provisions of section 353 requiring licensing did not apply to a laboratory in a hospital accredited by the Joint Commission on the Accreditation of Hospitals, later renamed the Joint Commission on the Accreditation of Healthcare Organizations (Joint Commission), or the American Osteopathic Association (AOA), or to an interstate laboratory inspected or accredited by either the Commission on Inspection and Accreditation of the College of American Pathologists (CAP) or by any other accreditation organization approved by the Secretary for this purpose. The accreditation standards applied by these organizations had to be equal to or more stringent than the requirements of section 353 and the regulations implementing it. In addition, there had to be adequate provision for assuring that the standards continued to be met by each accredited laboratory of a given accreditation organization. Section 353(l) of the PHSA, as enacted by CLIA '67, provided that where a State had enacted laws that set forth standards equal to or more stringent than the provisions of Section 353 or the regulations under that section, the Secretary could exempt laboratories in that State from compliance with that section.

HCFA, with the necessary scientific and technical support as needed from the Centers for Disease Control and the Food and Drug Administration of the Public Health Service (PHS), administers the CLIA program for HHS.

Three significant events occurred affecting clinical laboratories, both under the CLIA program and under Medicare and Medicaid. First, on October 31, 1988, Pub. L. 100-578, the Clinical Laboratory Improvement Amendments of 1988 (CLIA), was enacted. CLIA made every laboratory in the country that tests human specimens for health reasons subject to Federal regulation whether or not it participates in the Medicare or Medicaid program and whether or not it tests specimens in interstate commerce. CLIA also established test complexity as the basis for evaluating satisfactory performance in laboratory testing. (See discussion below under "Legislation".) Second, on March 14, 1990, we published in the **Federal Register** (55 FR 9538) final rules that consolidated and recodified regulations for the Medicare and Medicaid programs and for interstate laboratories into a new 42 CFR part 493. These rules were effective September 10, 1990. As of that date we have a single set of regulations for laboratories that are subject to Medicare or Medicaid or that test specimens in interstate commerce.

Third, on February 28, 1992 we published in the **Federal Register** (57 FR 7002) final rules that establish the performance requirements that laboratories must meet in order to be certified by HHS as in compliance with CLIA requirements and that supersede the March 14, 1990 regulations. With certain exceptions, the performance requirements are effective September 1, 1992.

Legislation

As stated earlier, on October 31, 1988, Congress enacted the Clinical Laboratory Improvement Amendments of 1988, which replaced in its entirety Section 353 of the PHSA. CLIA continues to provide for the accreditation of laboratories by accreditation organizations or exemption of laboratories from CLIA requirements when States apply requirements equal to or more stringent than the **Federal Register** requirements. These subsections were effective January 1, 1990. The content of the current CLIA provision concerning State licensure remains the same as under CLIA '67; however, the accreditation provision is much more detailed.

Section 353(e) states that a laboratory may be accredited for purposes of obtaining a CLIA certificate if the laboratory meets the standards of an approved accreditation organization and authorizes the organization to submit to the Secretary, State agency, or other designated HCFA agent, records or other information the Secretary requires.

According to the statute at section 353(e), the Secretary may approve a private, nonprofit organization for the accreditation of laboratories if the accreditation organization—

• Agrees to inspect a laboratory for purposes of accreditation at a frequency determined by the Secretary, using inspectors qualified to evaluate laboratory methodologies used in the performance of laboratory examinations and other test procedures;

• Applies standards equal to or more stringent than the standards issued by the Secretary in determining whether or not to accredit a laboratory;

• Provides adequate assurance that the standards of the accreditation organization continue to be met by the laboratories it accredits;

• Agrees to submit to the Secretary the name of any laboratory accredited by the organization that has had its accreditation denied, suspended, withdrawn, or revoked or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;

• Agrees to notify the Secretary at least 30 days before it changes its standards; and

• Agrees to notify each laboratory accredited by the organization within 10 days of a decision by the Secretary to withdraw his or her approval of the accreditation organization.

CLIA requires the Secretary to promulgate criteria and procedures for approving an accreditation organization and for withdrawing approval if it is determined that the accreditation organization does not meet Federal requirements. The statute does not specifically require the promulgation of specific criteria for the exemption of laboratories in a State. The decision whether or not to exempt all laboratories in a State from CLIA is discretionary with the Secretary.

Under CLIA, if the Secretary withdraws the approval of an accreditation organization, the certificate of any laboratory accredited by the organization continues in effect for 60 days after the laboratory receives notification of the withdrawal of the approval. The Secretary may extend the period for an additional period of time (which we have specified to be 60 days) if the laboratory submits to HCFA in a timely manner an application for accreditation by another accreditation organization or an application for a CLIA certificate based on an inspection for compliance with CLIA conditions by the State agency or other HCFA agent.

Under CLIA, if an accreditation organization withdraws or revokes the accreditation of a laboratory, the certificate of the laboratory will continue in effect—

• For 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or

• Until the effective date of any action taken by the Secretary under section 353(i) of the PHSA.

The performance of each approved accreditation organization or licensure agency is to be evaluated by HCFA annually. A sufficient number of accredited or licensed laboratories is to be inspected to allow a reasonable estimate of the performance of that organization.

The Secretary is to prepare and submit annually, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that describes the results of the evaluations conducted under section 353(e)(2)(D) of the PHSA.

Proposed Revisions to the Regulations

On August 20, 1990, we published a proposed rule to implement sections 353(e) and 353(p) of the PHSA as amended by CLIA (55 FR 33936). We proposed to add a new subpart E to 42 CFR part 493 to implement these sections. We proposed to institute the same requirements for both private accreditation organizations and for State licensure agencies. Although the statute does not require us to judge both by the same standards, we stated that we do not believe that it is reasonable to use different standards, since both entities function to assure us that laboratories meet statutory requirements for health and safety. The proposed regulations, therefore, addressed granting exemptions to and removing exemptions from specific State licensure agencies and the laboratories they license and were based on the statutory framework provided for private nonprofit accreditation organizations. The rationale for this approach was that we believe Congress could not have intended to allow the Secretary to grant exemptions to State licensure agencies without applying objective criteria to the State licensure programs, or to allow the Secretary to grant initial approvals without periodically re-evaluating those approvals. Based on the premise of the necessity of objective periodic re-evaluation, we used the list of statutory criteria provided for accreditation organizations because it is comprehensive and, we believe, conducive to maintaining the integrity of the deeming/exemption programs.

A. Requirements for Accreditation and Licensure Organizations

We proposed to include a general section, § 493.501, that would state the basic premise of the subpart: if a private nonprofit accreditation organization or State licensure agency for laboratories provides reasonable assurance to us that it requires the laboratories it accredits or licenses to meet requirements equal to or more stringent than CLIA conditions, we may deem its laboratories to be in compliance with CLIA, Medicare and Medicaid condition-level requirements. In new § 493.507, we would require that the laboratories be subject to validation inspections (surveys) performed by HCFA or its designee (see discussion on § 493.507) and authorize their accreditation organization or licensure agency to release to HCFA such records and reports as required by this regulation.

In § 493.503 we proposed to require each laboratory deemed to meet CLIA requirements under new subpart E to authorize its accreditation organization or State licensure agency to submit to us annually a copy of the laboratory's quarterly or semi-annual (if applicable) proficiency testing results for the purpose of establishing a system to make the proficiency testing results available, on a reasonable basis, upon request as required by section 353(f)(3) of CLIA. In case of a laboratory's failure to achieve successful participation in the proficiency testing program, the laboratory would be required to authorize its accreditation organization or State licensure agency to submit a report of test results to HCFA within 30 days of the notice of the failure. We would require submission of these results because section 353(f)(3) of CLIA requires that every laboratory issued a CLIA certificate must participate successfully in a proficiency testing program acceptable to HCFA for each specialty and subspecialty of test it performs. Failure to participate successfully or refusal to participate in a proficiency testing program would result in the laboratory's loss of deemed status and could possibly lead to suspension, revocation or limitation of the laboratory's CLIA certification if an inspection by a HCFA agent or the State survey agency found the laboratory's performance level warrants any of these actions.

In proposed § 493.504 we proposed to require that if an accreditation organization or licensure agency revokes or withdraws its accreditation or licensure from a laboratory, the certification would continue in effect until: (1) The effective date of a HCFA action to revoke, suspend, or limit a CLIA certificate or (2) 45 days after the laboratory receives notice of withdrawal or revocation of accreditation or licensure as required by the statute.

B. Definitions

In § 493.502, we proposed to define the following terms:

"Approved laboratory accreditation organization" would be defined as a

private, nonprofit accreditation organization or State licensure agency that has formally applied for and received HCFA's approval based on the organization's compliance with Federal requirements in accordance with this subpart.

"CLIA conditions" would mean the requirements laboratories must meet to receive a CLIA certificate.

"HCFA agent" would mean an entity other than the State survey agency with which HCFA may contract to perform inspections and review the functions of laboratories. A HCFA agent may be a professional organization, another component within HHS, or any other group that HCFA approves for this purpose.

"Rate of disparity" would mean the percent of validation inspections in which HCFA, the State survey agency or HCFA agent finds noncompliance with one or more conditions, but no comparable condition-level deficiencies were cited by the accreditation organization or licensure agency.

"State survey agency" would mean the State health agency or other appropriate State or local agency used by HCFA to perform inspections and review functions under CLIA.

"Substantial allegation" would mean a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles) that reflects on the health and safety of individuals served by a laboratory and raises doubts as to a laboratory's compliance with any CLIA condition.

"Validation review period" would be the period after the end of a fiscal year during which HCFA conducts a review of the validation surveys for the previous fiscal year.

We also proposed to revise the definition in § 493.2 of "accredited laboratory" to delete the names of currently approved accreditation organizations and licensure agencies and to state simply that an accredited laboratory is one approved by an accreditation organization or licensure agency meeting the requirements of subpart E.

C. Approved Laboratory Accreditation and State Licensure Programs

In our proposed rule we noted that we had recently published a proposed rule (55 FR 20896, May 21, 1990) identifying regulatory requirements that laboratories would need to meet to satisfy CLIA requirements. Once those proposed requirements were included in an effective final rule, we intended to add a new section to subpart E to indicate that laboratories accredited or licensed by specified entities would be deemed to meet all CLIA conditions, with the exception of any requirement under section 353 of the PHSA that HCFA identifies in the future as being more stringent or more precise than the requirements of the accreditation organization or State licensure agency. The laboratory would not initially be deemed to meet the more stringent requirement(s), but would have to actually demonstrate that it meets these requirements.

We stated our intent to publish a notice in the **Federal Register** containing the name of each approved accreditation organization or State licensure agency and our basis for granting deeming authority to that accreditation or licensure organization. The notice would describe how the organization provides reasonable assurance to HCFA that laboratories accredited or licensed by the organization or agency meet CLIA requirements.

D. Federal Review of Accreditation Organizations and Licensure Agencies

We proposed to add § 493.506, outlining the process for Federal review and approval of accreditation organizations and licensure agencies. The regulations at § 493.506 would specify that HCFA's review of a private, nonprofit accreditation organization or State licensure agency will include, but not be limited to, an analysis of the following items.

HCFA would evaluate the equivalency of the requirements of the accreditation organization or State licensure agency to comparable HCFA requirements. In order to receive HCFA approval, each accreditation organization or State licensure agency would have to be able to demonstrate adequately that each of its requirements is as stringent as those of HCFA. We particularly invited comments regarding how accreditation organizations and State licensure agencies might be able to demonstrate that certain standards, although different from the Federal approach, are indeed equally as stringent as Federal CLIA requirements in terms of protecting individuals served by the laboratory. We also invited comments on the feasibility of the development of a comprehensive crosswalk by which to compare the standards of an accreditation organization or State licensure agency to those of HCFA. We would perform a detailed review of the accreditation or licensure organization's inspection process. Finally, we would assure that the organization's agreement provides for furnishing required services.

In reviewing the accreditation or licensure organization's inspection process, we would evaluate the following items:

- The composition of the inspection team, qualifications of the surveyors, and the ability of the organization to provide continuing education to surveyors in order to insure that the accreditation or licensure organization employs qualified surveyors who are able to perform accurate inspections, as required by section 353(e)(2)(A)(i) of the PHSA;
- The comparability of the comprehensive inspection and complaint inspection procedures of the accreditation organization or licensure agency, including those for routine inspection frequency as required by section 353(e)(2)(A)(ii) of the PHSA, to those of HCFA;
- The organization's or agency's procedures for monitoring laboratories to assure that the laboratories continue to meet its standards, as required by section 353(e)(2)(A)(iii) of the PHSA;
- The ability of the organization or agency to provide HCFA the necessary reports in electronic data in ASCII-comparable code, which can be electronically transmitted into the HCFA computer network, thus eliminating excess paperwork and staff time and facilitating the effective validation and assessment of the organization's inspection process as required by section 353(e)(2)(D) of the PHSA.
- The ability of the organization or agency to provide to HCFA annually reports of adverse actions resulting from PT results constituting unsuccessful participation in PT programs, and the PT failures within 30 days of the adverse action.
- The ability of the organization or agency to provide adequate funding to perform required inspections.

In assuring that the organization's or agency's agreement provides for furnishing all required services, we proposed to verify that it contain the following items. The organization or agency would agree to provide HCFA—

- Within 30 days of the action taken, the name of any laboratory accredited or licensed by the organization or State that has had its accreditation or State licensure denied, suspended, withdrawn, or revoked, or that has had any other adverse action taken against it by the organization. (This is not the same as suspension or revocation of a CLIA certificate, which are actions that can be taken by HCFA after a

laboratory's accreditation is suspended, withdrawn or revoked by the accreditation organization or if, after an inspection by the survey agency or other HCFA agent, the laboratory is found out of compliance with CLIA conditions and remains out of compliance.)

- As required by section 353 of the PHSA, documentation that each laboratory accredited or licensed by the organization or agency is notified within 10 days of HCFA's withdrawal of the recognition of the organization's deeming authority;
- An inspection schedule to facilitate the conducting of HCFA validation inspections; and
- Annually, facility-specific data to include but not be limited to the results of the laboratory's quarterly or semi-annual (if applicable) proficiency testing, except for the proficiency testing results of a laboratory that failed to achieve satisfactory results within 30 days of a notice of failure. This report could be incorporated within the report of the action taken by the accreditation organization or licensure agency resulting from the failure to achieve satisfactory proficiency testing results.

The regulations at § 493.501 would further provide for HCFA to publish a notice in the **Federal Register** containing the names of any private, nonprofit accreditation organization or State licensure agencies to which HCFA has given deeming authority, the basis for the granting of deeming authority to each organization, and a description of how each organization provides to HCFA reasonable assurance that laboratories accredited or licensed by each organization or agency meet CLIA requirements.

E. Validation Inspections

1. Basis for Inspection

We proposed at § 493.507 that we may require an inspection of an accredited laboratory by HCFA, its agents, or the State survey agency, in order to validate the process used by the laboratory's accreditation organization. We would inspect laboratories on a selective-sample basis or in response to substantial allegations of one or more deficiencies. Inspections conducted on a sample basis would be comprehensive, address all CLIA conditions, and be sufficient in number to allow a reasonable evaluation of the performance of each accreditation organization or State licensure agency. Inspections conducted in response to a substantial allegation of noncompliance would focus on any condition that HCFA determines is related to the allegation. If the State survey agency or other HCFA agent substantiates an allegation and HCFA determines that the laboratory is out of compliance with any CLIA condition, the State survey agency or other HCFA agent would conduct an inspection of all CLIA conditions.

Section 353(e)(2)(B) of the PHSA states that the Secretary shall promulgate criteria and procedures for approving an accreditation organization and for withdrawing approval of organizations that do not meet the requirements of Section 353(e)(2)(A) of PHSA. The validation process would establish the mechanism by which a determination is made that the accreditation organization no longer meets the requirements of Section 353(e)(2)(A) and that the approval of that organization's deeming authority should be withdrawn.

2. Effect of Selection for Inspection

The regulations at § 493.507(b) would specify the additional requirements for a laboratory selected for a validation inspection. The requirements would be consistent with the Secretary's statutory obligation to promulgate procedures for withdrawing the approval of an accreditation organization or State licensure agency and would be consistent with existing validation procedures applicable to accredited providers currently participating in the Medicare program under deemed status.

We proposed that a laboratory selected for a validation inspection must:

- Authorize its accreditation organization or licensure agency to release to HCFA, the State survey agency or designated HCFA agent, a copy of the laboratory's most recent full accreditation or licensure inspection, and any subsequent partial inspection;
- Authorize the validation inspection to take place at the facility; and
- Authorize HCFA, the State survey agency or any designated HCFA agent to monitor the correction of any deficiencies found through the validation inspection, to insure that they are corrected in a timely manner.

We proposed to require a copy of the laboratory's full inspection and any subsequent partial inspections for the purpose of comparing the findings of the accreditation organization or State licensure agency with those that HCFA may identify during the validation inspection. (The accreditation inspection would be disclosable to the public only if it is related to an enforcement action taken by the Secretary.)

3. Refusal to Cooperate with Inspection

We additionally proposed to require that if a laboratory selected for a validation inspection fails to provide the necessary authorizations for the validation inspection to be performed, it would no longer be deemed to meet CLIA conditions. This is because section 353(e)(1)(B) of the PHSA states that a laboratory may be accredited (deemed to meet CLIA conditions) if it, among other factors, authorizes the accreditation organization to submit to the Secretary required information. Failure to cooperate with the survey would either directly or indirectly result in a failure to provide necessary information to the Secretary and would result in a loss of deemed status. Instead, it would be subject to an inspection of all CLIA conditions by HCFA, the State survey agency or other designated HCFA agent in accordance with 42 CFR part 493, subpart N, and might also be subject to suspension, revocation, or limitation of its CLIA certificate as specified in the statute and in accordance with proposed § 493.1806 (April 2, 1991, 56 FR 13439) for failure to meet the requirements in part 493.

4. Consequences of the Finding of Noncompliance

We proposed at § 493.507(d) that if a validation inspection results in a finding that a laboratory is out of compliance with one or more CLIA conditions, the laboratory would no longer be deemed to be in compliance with CLIA conditions. Specifically, the laboratory would then be subject to the requirements at 42 CFR part 493 applied to laboratories that are not deemed under CLIA, and to a full review by HCFA, the State survey agency or other designated HCFA agent in accordance with 42 CFR part 493, subpart N. As authorized by the statute, the laboratory could also be subject to suspension, revocation, or limitation of its CLIA certificate as specified at § 493.1706.

5. Reinstatement

We proposed at § 493.507(e) that an accredited or State licensed laboratory would once again be deemed to meet CLIA conditions only if it withdraws any prior refusal to authorize its accreditation organization or licensure agency to release to HCFA a copy of its current accreditation or licensure inspection or notification of any adverse actions resulting from PT results, or withdraws any prior refusal to allow a validation inspection. Furthermore, HCFA, the survey agency, or other HCFA agent, via an onsite inspection and review of documentation, would

have to find the laboratory in compliance with all CLIA conditions.

F. Removal of HCFA Approval of Accreditation Organization's or Licensure Agency's Deeming Authority

The proposed regulations at §§ 493.509 and 493.511 would set forth specific criteria and procedures for removing the approval of a private, nonprofit accreditation organization or State licensure agency. The criteria and procedures would call for a review of the accreditation organization's or licensure agency's requirements to verify their comparability with HCFA and CLIA conditions. We would compare the results of the validation inspection with the most recent accreditation inspection to determine whether any disparities exist.

We would perform a deeming authority review whenever such review is warranted by our findings with respect to the comparability of requirements or the rate of disparity of findings. If our review indicated variance with our requirements, we could grant a conditional approval. If it indicated poor performance, we could provide for a probationary period of up to one year. At the end of the probationary period, the organization could keep its HCFA approval, or its approval could be withdrawn. If the deeming authority of an organization were no longer recognized, we would issue a notice in the **Federal Register** and allow accredited providers and suppliers opportunity to obtain HCFA certification. This proposed process is more fully discussed below.

1. Comparability Review (Section 493.509(a))

In addition to comparing the equivalency of an accreditation organization's accreditation requirements or a State licensure agency's licensing requirements to the comparable HCFA requirements when such an organization or agency applies for deeming authority or exemption from CLIA requirements, we also proposed to conduct a comparability review whenever new CLIA conditions are promulgated or an accreditation or licensure organization proposes to adopt new requirements. This would implement section 353(e)(2)(A)(ii) of the PHSA, which requires an accreditation organization's requirements to be equal to or more stringent than the requirements established by HCFA.

We would identify accreditation organizations and State licensure agencies whose procedures and requirements are not comparable with CLIA conditions, in order to safeguard physicians, laboratories, and the general public.

2. Validation Review (Section 493.509(b))

Following the end of a validation review period, we would identify any accreditation organizations or licensure agencies for which either or both of the following situations exist: (1) Validation inspection results indicate a rate of disparity of 20 percent or more between certifications of the accreditation organization or licensure agency and certifications of HCFA, the State survey agency or other HCFA agent; and (2) Validation inspection results over a period of two or more years indicate a pattern of increasing disparity between the certifications of the accreditation organization or licensure agency and certifications of HCFA, the State survey agency or other HCFA agent.

We solicited public comment regarding use of the 20 percent rate of disparity.

3. Notice (Section 493.509(c))

The regulations would specify that if the validation or comparability review finds that an accreditation organization or licensure agency is not meeting the requirements of this regulation, we would inform the organization in writing that its approval may be in jeopardy. The proposed notice would contain the following information:

- A statement identifying the CLIA requirements for which disparity was found, and the instance, rate, and patterns (if any) of the disparity;
- An explanation of the validation review on which our decision is based;
- A description of the procedures available for the organization to follow to explain or refute the findings of the validation review (that is, who to contact and the time frame for doing so); and
- A description of possible actions that may be imposed based on the findings of the validation review.

4. Deeming Authority Review (Section 493.511)

We would conduct a deeming authority review of an accreditation organization or licensure agency if the comparability or validation review produces findings of lack of comparability between requirements or disparity between accreditation and validation inspection results. We would review, as appropriate, the comparability of accreditation organization or State licensure requirements to ours and the procedures for inspecting and monitoring laboratories to reevaluate if the accreditation organization or licensure agency continues to meet Federal criteria.

In § 493.511 (b) and (c) we proposed that if we determine, following the deeming authority review, that the accreditation organization or licensure agency had failed to adopt requirements comparable to ours, the organization could be given a conditional approval of its deeming authority for a probationary period of up to six months during which it could adopt comparable requirements.

If we determined, following the deeming authority review, that the rate of disparity identified during the validation review indicates poor performance by the accreditation organization or licensure agency, we would take a number of actions. First, HCFA could provide the accreditation organization or licensure agency conditional approval of its deeming authority for a probationary period of up to one year (whether or not there are also noncomparable requirements) effective 30 days following the date of the determination. We would require the accreditation organization or licensure agency to release to us any facility-specific data we require for continued monitoring. We would require the accreditation organization or licensure agency to provide us with an inspection schedule for the purpose of intermittent onsite monitoring during the probationary period of the organization's inspection process by HCFA staff, State surveyors, HCFA agents, or all three.

The difference in the probationary periods would be based on the amounts of time we feel are necessary to correct disparity due to lack of comparability between requirements or disparity caused by poor performance on the part of the accreditation organization or State licensure agency. We could require additional validation inspections of laboratories as part of the process of monitoring the correction process on the part of the accreditation organization or licensure agency.

5. Action Following the Probationary Period

The proposed regulations further stated that within 60 days after the end of any probationary period, we would conduct a final determination review and make a final determination as to whether or not an accreditation organization or licensure agency continues to meet the criteria at § 493.506 and issue an appropriate notice (including reasons for this determination) to the accreditation organization or licensure agency.

This determination would be based on one or more of the following:

- The evaluation of the most recent validation inspection and review findings;
- The evaluation of facility-specific data and related information;
- The evaluation of the accreditation organization's or licensure agency's surveyors in terms of qualifications, continuing education, composition of the inspection team, and similar items;
- The evaluation of inspection procedures;
- The accreditation or licensure requirements.

The regulations would specify that if the accreditation organization or licensure agency has not made acceptable improvements during the probationary period, we may remove approval of deeming authority. HCFA review or action would not in any way affect or limit the conducting of any validation inspection. We would publish in the **Federal Register** a notice containing a justification for removal of deeming authority from an accreditation organization or licensure agency.

6. Continuation of Validity of CLIA Certificate (Section 493.511(g))

The proposed regulations would further provide for the CLIA certificate of affected laboratories to continue in effect for 60 days after the laboratory receives notification that its accreditation organization's or licensure agency's authorization to grant deemed status was being removed. Such a period would allow us the time to inspect to see if the affected laboratories meet CLIA requirements. The proposed regulations specified that we could extend this period for an additional 60 days if the laboratory submitted a timely application for accreditation by another approved accreditation organization or exemption by an approved licensure agency or submitted a timely application to HCFA for a CLIA certificate so that the laboratory's compliance with CLIA conditions can be determined.

G. Report

We proposed to prepare and submit a report annually to Congress that describes the results of the selective-sample validation inspection conducted under § 493.507 and the reviews conducted under § 493.509. The report would include the name of any accreditation organization or licensure agency that is given conditional approval during a probationary period by us.

H. Technical Revisions

We proposed to remove § 493.1701(b)(4) and § 493.1708 as they would be superseded by the new subpart E.

Comments and Responses

We received comments from 32 commenters in response to the proposed rule published on August 20, 1990. Commenters included professional associations, laboratories, accreditation organizations, State and City governments and consumers. While many of the commenters expressed overall support for the proposed regulation and/or approval of HCFA's "deeming" process, there was an array of concerns that we have summarized below.

Note: We have revised several terms for clarity and use these new terms in our responses to comments:

"CLIA-exempt" replaces "State-exempt";
"State laboratory program" or "State program" replaces "State licensure agency" and "State licensure program";
"Approved State laboratory program" or "approved State program" replaces "approved State licensure agency", "State exemption" and "exempt State"; and
"Condition level requirement" replaces "CLIA condition".

General Comments

We have summarized below those comments that do not pertain to a single section of the proposed regulations, but rather relate to the policies included in the proposed rule in general.

Expression of Support

Comment: Many commenters expressed overall support for the proposed regulations and the process by which HCFA will grant deeming authority to private nonprofit accreditation organizations or grant recognition to State licensure laws. (Hereafter, the term "deeming authority" will be used in the case of private nonprofit accreditation organizations, and the term "exemption" will apply to laboratories in States with approved State programs.)

Response: We appreciate the support we have received for this rule and are committed to the development of regulations that are reflective of the accreditation related aspects of the CLIA provisions and that will implement the law effectively.

Related Regulations

Comment: Several commenters recommended that HCFA publish all CLIA-related regulations simultaneously, in their entirety, in order to allow for a complete review and a chance to comment on all CLIA regulations at one time.

Response: We recognize that publishing CLIA regulations simultaneously would have facilitated a thorough review of the implementation of all CLIA legislation by enabling the reader to review related regulatory provisions at the same time. However, to do so would have ultimately resulted in some CLIA regulations being delayed; for example, three of these regulations were published on February 28, 1992. (HSQ–176–FC—Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988, 57 FR 7002, HSQ–177–F—Fee collection, 57 FR 7188, and HSQ–179–F—Enforcement Procedures for Laboratories, 57 FR 7218). We have cross-referenced other regulatory documents with **Federal Register** numbers and publication dates and agency control numbers to assist the reader in locating related material.

General Comments on Impact

Comment: One commenter stated that applying the same standards to the approval of accreditation agencies under section 353(e)(2) of the PHSA and to the granting of exemptions based on State laws under section 353(p)(2) of the Act conflicts with the statutory provisions and will cause significant implementation problems. The commenter believed that the PHSA provides for the granting of exemptions based on a review of State licensure law and not through the recognition of State licensure agencies.

Response: The commenter is correct in that there are different statutory provisions concerning deeming authority for approved accreditation organizations and approval of exemption from CLIA requirements of all laboratories in a State whose laws regarding the regulation of laboratories are equal to or more stringent than those specified in CLIA. While we have always recognized that there are differences in the statutory provisions with respect to both types of entities, we continue to believe that in all cases the protection of the health and safety of individuals using these laboratories, as well as that of the general public, is the paramount consideration in determining whether to approve a request for deeming authority by an accreditation organization or to approve a State's request for an exemption from CLIA requirements.

There are two major differences between deeming through accreditation and exemption under State law that must be considered in developing and implementing effective regulations: Accreditation is voluntary while State

licensure and regulation are mandatory and imposed under the force of law; and accreditation is national in scope while exemptions from CLIA requirements can be approved only on a State-by-State basis. Thus, while all licensed or approved laboratories in an approved State will be exempt from CLIA requirements, should the State satisfy us as to the equivalency of its requirements, the criteria we will use in making that determination will not differ substantially from those used in determining whether to approve a request for deeming authority by a private accreditation organization. However, we are aware that the unique characteristics of individual State laws and enforcement mechanisms may require more flexibility in our deliberations regarding these States. Therefore, we have accepted the commenter's suggestion and have included separate regulatory provisions for accreditation organizations and States in this final rule to implement these programs in a manner that is consistent with the respective treatment accorded to each under the statute. The provisions that apply to approved State programs are included in this final rule at §§ 493.513, 493.515, 493. 517, 493.519 and 493.521. It will still be necessary for a State that wishes all laboratories in that State to be exempt from the CLIA requirements to apply for approval of its State laboratory program and to demonstrate that its requirements for laboratories, imposed under State law, are equal to or more stringent than the CLIA requirements.

Approved State laboratory programs will be required to apply for the renewal of their approval every two years. There are a number of reasons that this reapplication procedure is necessary. First, while the approval of an accreditation organization is not time limited, the CLIA certificate of accreditation furnished to accredited laboratories is valid for two years. At the end of that time each laboratory determines whether to obtain a new certificate of accreditation or to apply for a regular certificate on the basis of a State survey agency inspection. In either case, the laboratory's approval under CLIA is good for two years. In the case of approved State laboratory programs, all of the laboratories in the State are exempt from CLIA requirements as long as the State's approval is in effect. To ensure that the treatment of both types of laboratories is comparable, we will approve a State laboratory program for a two year period.

Additionally, there are substantial costs involved in the administration of a laboratory certification or exemption program under an accreditation or State program. In the case of accredited laboratories, these costs are borne directly by the laboratories as reflected in the fees paid for the certificate of accreditation. The costs of administering approved State programs must be paid by the States, who may pass through these costs to the laboratories in the form of licensing fees or through some other mechanism. In any case, for a State laboratory program to receive approval for exemption of its laboratories, the State must agree to pay to HCFA the costs associated with the program. Some of these costs are general administrative costs involved in evaluating the initial application for approval, the costs of the validation program, and the cost of investigating complaints. We will recalculate these costs every two years, and we feel it could pose an unrealistic fiscal burden to expect a State to commit to make payments of an unknown amount for an indefinite period of time. By approving the State programs for a two year period, each State will have the opportunity to decide if it wishes to continue as an approved program or to have the laboratories in the State seek CLIA certification through accreditation or directly through inspection by the State survey agency.

The new regulation sections reflect the statutory framework for State laboratory programs and provide that it is up to the Secretary, through HCFA, to determine whether State laws are equal to or more stringent than CLIA requirements. Once we make that determination with respect to the laws of any State, a decision to exempt laboratories in that State from CLIA remains discretionary with HCFA.

Thus, HCFA will impose reasonable conditions, specified in this final rule, designed to ensure enforcement with equivalent CLIA requirements, on the decision to exempt the laboratories of any State. Once a State has satisfied these reasonable conditions and we have decided to exempt the laboratories of that State, by definition the laboratories in that State are not subject to Federal standards or enforcement. While these laboratories would be exempt from CLIA requirements, we can seek an injunction in Federal court under section 353(j) of CLIA with respect to individual laboratories found to have serious deficiencies that the State is unwilling to address, or we can withdraw approval of the State's laboratory program at any time. With respect to the reasonable conditions reflected in the new regulatory sections, in addition to establishing that its laws regarding laboratory requirements are equal to or more stringent than those imposed by CLIA, a State requesting exemption from CLIA must:

- Demonstrate that it has adequate enforcement authority and the administrative structure and resources adequate to enforce its State standards;
- Permit HCFA or its agents to perform validation inspections of laboratories in the State;
- Agree to pay the cost of these validation inspections; and
- Agree to take appropriate enforcement action against laboratories found by HCFA or its agents not to be in compliance with standards equivalent to CLIA standards.

We believe that most States enforce their laboratory laws through a licensure mechanism, but we have included in our definitions of State licensure and State licensure agency in § 493.2 language that allows for approval mechanisms other than licensure that may be employed by a State for the enforcement of its standards for laboratories.

When HCFA approves a State laboratory program, laboratories in that State will not have the option of seeking CLIA certification through accreditation. Laboratories that are exempt from CLIA, by definition, must comply with the requirements of their approved State laboratory program. Only if an approved State program were to recognize an accreditation program as having requirements equivalent to its own, and provided for the "deeming" of State requirements through accreditation under State law, would accreditation be of any consequence.

Requirements for both the accreditation organizations and State laboratory programs are generally the same. Below we summarize the differences in requirements for State laboratory programs.

1. Section 493.503, Proficiency testing requirements for laboratories with deemed status, specifies the proficiency testing (PT) requirements of laboratories with deemed status. In § 493.515, Federal review of laboratory requirements of State laboratory programs, we permit the States with an approved State laboratory program to govern the PT requirements independently. However, we note that HCFA will hold the States to the same requirements when conducting a comparability review.

2. Section 493.504, Revocation of accreditation, specifies the statutory requirements (criteria) to permit continued recognition of a laboratory by HCFA, after an accreditation

organization withdraws its accreditation. There exist no comparable requirements for State laboratory programs because only the State has the authority to issue a license or approve a laboratory in that State. The regulation requires that a laboratory must be licensed or approved if a State has a program for licensure or approval that is recognized by the Secretary.

3. Paragraph (a) of § 493.506, Federal review and initial approval of private, nonprofit accreditation organizations, permits an accreditation organization to request approval for all specialties and subspecialties or for specific ones. A State laboratory program must govern a laboratory in its entirety.

4. Section 493.507(d), Consequences of a finding of noncompliance, provides that if a validation inspection results in a finding of noncompliance, the laboratory is subject to the same requirements applied to laboratories that are not accredited. However, in the case of States, § 493.517(d) (also "Consequences of a finding of noncompliance") specifies that if a validation inspection results in a finding of noncompliance, a laboratory's State license or approval will continue to be recognized. We will refer the deficiencies to the State and require the State to take the appropriate enforcement action against the laboratory. We will then monitor the State to ensure that the recommended action is being enforced. If the State refuses to take the appropriate action, § 493.521, Removal of CLIA-exemption and final determination review, permits HCFA to remove recognition of the State laboratory program.

5. Section 493.507(e), Reinstatement, specifies the criteria HCFA will use to determine if an accredited laboratory's deemed status should be reinstated. There exists no similar requirement under the State laboratory program provisions since HCFA has no authority to remove a laboratory's State license or approval.

6. Sections 493.511, Deeming authority review and final determination review, and 493.521, Removal of CLIA exemption and final determination review, provide for a reconsideration when HCFA removes approval for recognition of an accreditation organization or State program.

7. Section 493.521(g) specifies that HCFA will cancel the approval of an approved State laboratory program if the State does not pay the applicable estimated costs of validation surveys. Approved States are obligated to pay applicable fees to the Federal goverment, whether or not these costs are passed on to the laboratories in licensing fees or by some other mechanism. In the case of accredited laboratories, validation costs are dispersed among all laboratories holding a certification of accreditation.

Comment: One commenter urged HCFA to reconsider the proposed rule. This party believed there would be significant, unnecessary adverse impacts on access to care as a result of the proposed rule. The implication of this comment was that requirements for obtaining a CLIA certificate are too strict, thereby limiting the number of laboratories that could receive one. If this happened, patients' access to laboratories also would be limited.

Response: The impact on access to care is not within the purview of this rule. However, it has been our objective under CLIA to develop regulations that provide an appropriate balance between the concern for access to care and the need to protect the public from inaccurate and potentially dangerous testing. The rule that addresses these issues was entitled "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988" (HSQ–176–F) and was published in the **Federal Register** on February 28, 1992 (57 FR 7002). In that rule we establish conditions that laboratories must meet to receive a CLIA certificate.

Comment: One commenter stated that HCFA should make it clear in the final rule that obtaining certification via accreditation by a "deemed" private organization is voluntary, not mandatory.

Response: We have accepted this suggestion. We have reflected this policy in the definition of accredited laboratory at § 493.2.

Comment: One commenter stated that, based on many years of experience in laboratory inspection and accreditation, the commenter's position is that no private, nonprofit organization or State licensure agency has the capacity to accredit or certify laboratories in the context of this regulation.

Response: We cannot make any predictions about which accreditation organizations or State laboratory programs will or will not be approved for CLIA purposes until a comparability review is performed to determine the equivalency of an accreditation organization's or State laboratory program's requirements and procedures to those of HCFA. Our commitment is that only quality laboratories be permitted to perform services. If an accreditation organization wishes to be granted deeming authority, it must have appropriate procedures for assuring that the standards are met by the accredited laboratory. Similarly, HCFA will closely examine the requirements established under State law for any State that requests exemption of its laboratories from CLIA.

Comment: One commenter stated that there should be an opportunity for public comment at the time an accreditation organization applies for deeming authority. The commenter believes that this is part of Congressional intent in drafting the accreditation provisions of CLIA and may be required under law.

Response: To provide for public comment each time any accreditation organization or State applies for deeming authority or exemption from CLIA requirements, respectively, would unduly complicate our task of implementing CLIA due to the large numbers of laboratories coming under regulation for the first time. We have sought public comments on our interpretation of the statute and resulting regulatory policies. We considered all comments and either incorporated changes into our final regulations or explained why we were not doing so. We believe our final regulations are reflective of public opinion. We will publish in the **Federal Register** the name of each approved accreditation organization or State laboratory program and our basis for granting deeming authority or approval to that organization or program. In addition, the **Federal Register** document will describe how the organization or program provides reasonable assurance to HCFA that laboratories accredited or licensed (or approved) by it can be deemed to meet condition level requirements or exempted from meeting them.

Comment: A few commenters stated that there is no mention of any fee that will be charged to the accreditation organization to cover the costs of HCFA's review and approval process of an accreditation organization's requirements.

Response: Unlike the provision of CLIA that fees be collected to monitor laboratory compliance (see 57 FR 7118, published on February 28, 1992 for our final rule on this subject), the law provides no authority to charge fees for approval of accreditation organizations. The costs associated with the requests by an organization to be granted "deeming authority" and the costs of validation inspections will be reflected in the fees collected from laboratories for the issuance of certificates of accreditation.

Comment: One commenter believed that HCFA should carefully scrutinize State programs, since they are much

more vulnerable to political forces attempting to dilute or eliminate regulations necessary to fulfill CLIA requirements.

Response: We are required by law to scrutinize the laboratory requirements of States as well as those of private, nonprofit accreditation organizations. We are committed to assuring that all organizations granted deeming authority and all States whose laboratories are granted exemption meet the applicable Federal criteria for such approval as set forth in §§ 493.506 through 493.515, and that all laboratories accredited by an approved organization or licensed or approved in a State with an approved State laboratory program meet condition level requirements that we have determined to be comparable to CLIA's.

Comment: One commenter recommended that a task force of HCFA, the States of New York and Pennsylvania and private accreditation organizations be formed to establish the final "deeming authority" regulations.

Response: The nature of the process by which we respond to comments on a published notice of proposed rulemaking offers an efficient and effective means to request and obtain input from a broad spectrum of the public. To include only a few members of the public on a task force to draft final regulations would, at best, be soliciting repetitive comments, and would, at worst, be contrary to the intent of the Administrative Procedure Act. Such an approach could allow an inequitable opportunity for certain parties to influence the agency's reaction to public comments and the ultimate formulation of policy.

Comment: One commenter believed that approval of accrediting organizations would add another bureaucratic level that would decrease efficiency while increasing costs.

Response: We disagree with this comment. Accreditation is strictly voluntary on the part of each laboratory. Therefore, the number of accreditation organizations approved would not in itself cause laboratories to incur additional costs or otherwise decrease efficiency.

Comment: One commenter stated that the proposed regulation should be modified to ensure that States with strong clinical laboratory statutes receive deemed status.

Response: States that have strong clinical laboratory statutes and apply for HCFA approval will be granted such an approval if by "strong" the commenter means that State requirements are such that we find them to be equal to or more stringent than the condition level requirements set forth in applicable sections of part 493.

Comment: One commenter stated that State licensing laws should be recognized simply based on the States' assurance that they provide an equivalent level of protection for patients. Another commenter stated that an accurate evaluation of equivalency under § 493.506(a) is absolutely essential for deemed status to operate appropriately and that reliance upon the accreditation organization or State alone to provide reasonable assurance is not sufficient.

Response: We do not believe it is appropriate to accept a State laboratory program's or a private accreditation organization's assertion that its standards are at least equivalent to Federal requirements. In either case, we are obliged to consider whether an organization's or State's standards are "equal to or more stringent" than those set forth in CLIA. In addition, we believe that for us to make this determination properly we need not only review substantive and procedural requirements of these entities to determine "equivalency", but we must also assess the efficacy of these standards and procedures, as applied by organizations and States on a continuing basis.

Application Process

Comment: Several commenters stated that the actual process for applying for deemed status is not outlined in the regulation.

Response: In response to the comment we have inserted the application process for accreditation organizations at § 493.501(c) and for States seeking approval of their laboratory programs at § 493.513(c). Accreditation organizations or States wishing to apply to HCFA for "deeming authority" or for "exemption", respectively, must provide the following information:

- The specialty(ies) or subspecialty(ies) for which an accreditation organization is requesting "deeming authority";
- A detailed comparison of individual laboratory requirements of the accreditation organization or State with the comparable condition level requirements; i.e., a crosswalk. The crosswalk will be used to help establish that the body of an organization's or State's requirements are equivalent to the body of applicable CLIA requirements. Where accreditation standards or State requirements differ in detail from specific condition level requirements, the organization or State must demonstrate how its standards are at least equal to CLIA's either by a comparison to the most nearly equivalent CLIA requirement or by demonstrating how a less stringent requirement in one instance is offset by more stringent requirements in a related area. We will make every effort to accept reasonable differences and encourage innovative approaches provided that the accreditation organization or State requirements substantiate the equivalency of the entire body of standards;
- A detailed description of the inspection process, including:

—The frequency of inspections;
—Copies of inspection forms;
—The review and decision-making process;
—The surveyor guidelines and/or instructions;
—The steps taken to monitor the correction of deficiencies;

- A description of the process for monitoring unsuccessful participation in a proficiency testing program, including action to be taken in response to proficiency testing failures;
- A description of the accreditation organization's or State's data management and analysis system with respect to its inspection process;
- Procedures for the removal or withdrawal of accreditation status or of State licensure or approval for laboratories that fail to meet the organization's or State laboratory program's standards;
- Current procedures employed to investigate and respond to complaints against accredited or exempt State licensed or approved facilities;
- Duration of a laboratory's accreditation, including a list of all those currently accredited; and
- In the case of approved State programs, a list of all licensed or approved laboratories, the expiration date of each laboratory's licensure or approval, and each laboratory's specialties and subspecialties. (This information is necessary for the laboratories in the State to be paid for claims under Medicare or Medicaid.)

Private accreditation organizations must also provide:

- Detailed information about the kinds of personnel (surveyors or inspectors) who perform inspections, including:

—The size and composition of individual accreditation or inspection teams;
—The education and experience requirements those inspectors must meet; and
—The content and frequency of the in-service training provided to inspection personnel;

• Procedures for providing PT information in response to public requests for such information; and

• A proposed agreement that stipulates the accreditation organization will comply with the specific notification procedures included in this rule.

HCFA will notify an organization or State if it finds that additional information is required.

Each accreditation organization or State will receive a written notice from the HCFA Administrator stating whether the request for "deeming authority" or CLIA-exemption of the laboratories in a State has been approved or denied. Approval of accreditation organization and State laboratory programs is for a six year term, at a maximum. We established this six year term of approval because we believe it would be irresponsible and unreasonable simply to approve an organization or laboratory program for an indefinite amount of time and not provide for further comprehensive reviews. Since HCFA has discretionary authority with respect to the approval of accreditation organizations and State laboratory programs, we must be able to impose reasonable conditions, such as the six year term, in order to ensure the health and safety of the patients and the general public.

A notice will also be published in the Federal Register indicating the accreditation organizations for which deeming authority and the States for which exemption was approved, and the rationale for these decisions.

All requests for "deeming authority" or "exemption" should be mailed to: Administrator, Health Care Financing Administration, Room 700 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Compliance Costs

Comment: One commenter stated that the added expense of having to comply with provisions of both CLIA '67 and CLIA may cause small laboratories to close.

Response: This comment does not come directly under the purview of this rule. The issue of costs to laboratories of meeting CLIA requirements is related to HSQ–176–FC—Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988, published February 28, 1992 (57 FR 7002). Certificate and compliance determination fees that laboratories must pay are specified in HSQ–177–F, Fee Collection, published February 28, 1992 (57 FR 7188).

Comment: One commenter believed that many accreditation programs will withdraw (not seek HCFA approval), rather than expend time, effort, and costs to comply with HCFA requirements.

Response: We recognize that some accreditation programs may have to revise their requirements and procedures in order to meet the requirements of CLIA. However, HCFA is charged with carrying out the law and implementing regulations that will reflect what we believe to be the most effective means of carrying out the purposes of the CLIA statute. By evaluating accreditation and State requirements taken as a whole, the approval process has the flexibility necessary to accommodate some differences in individual requirements while recognizing the equivalency of one body of standards to another body of standards.

Comment: One commenter believed that the public would be better served by a return to basics similar to those presented in CLIA '67; thus, all laboratories could be brought under some type of oversight, which in and of itself would improve the quality of health care in this country.

Response: We disagree with the commenter's suggestion that the public interest would be better served by implementing only minimal requirements for all laboratories. CLIA already provides that virtually every laboratory will be brought under oversight, and the requirements implemented must address the condition level requirements for laboratory performance specified in the statute. Additionally, this rule does not establish laboratory requirements but rather provides a mechanism for assessing the equivalency of accreditation organization and State licensure or approval requirements as compared to the Federal requirements.

Comment: One commenter stated that facilities that perform only limited testing as part of routine nursing services and are not reimbursed separately by Medicare or Medicaid would be required to comply with rules disproportionate to the extent of testing performed. One commenter believed that nursing facilities and intermediate care facilities for the mentally retarded that obtain their laboratory services from outside entities may encounter reduced access to certified laboratories especially in rural areas. Many of these facilities currently obtain laboratory services from physicians' offices or small independent laboratories. If the number of waivered tests or tests of moderate complexity are unrealistically limited, residents' access to services and timely follow-up care will be unnecessarily jeopardized.

Response: These two comments do not come directly under the purview of this rule. The issues concerning accessibility to laboratory services and waivered test requirements are related to the rule published on February 28, 1992 (57 FR 7002), specifying the conditions laboratories have to meet to be given a CLIA certificate.

Staff Availability

Comment: One commenter believed that the implementation of this regulation should be delayed until HCFA can address the problems of a shrinking personnel pool in the laboratory field.

Response: This comment does not come under the purview of this regulation if the commenter is referring to a diminishing source of personnel to staff clinical laboratories. The participation requirements published in the previously cited rule address personnel requirements for laboratories. However, if the commenter is referring to the unavailability of staff for accreditation organizations, we can only respond that the personnel inspecting the operation of a laboratory must be qualified by training and experience to perform any survey of laboratories.

Hospital Laboratories

Comment: One commenter stated that HCFA's involvement in hospital laboratory accreditation should be no greater than maintaining and reviewing the records provided by the various certifying agencies that already exist.

Response: We do not accept this suggestion. HCFA is responsible for ensuring that any hospital laboratory, accredited or not, is in compliance with the provisions of CLIA. It is true that HCFA will have to review the aforementioned records in order to validate findings used by the laboratory's accreditation organization or a State's inspection program. It will also be necessary for HCFA to inspect laboratories on a representative sample basis or in response to substantial allegations of deficiencies.

Comment: One commenter stated that since New York City's Laboratory Improvement Program was the first of any in this country to regulate clinical laboratories, "city licensure agency" should be allowed to act as an accreditation organization. One commenter submitted an application to HCFA for recognition as an accreditation agency.

Response: Regarding the commenter's remarks with respect to whether a city

licensure agency can act as an accreditation organization, any entity that meets the definition of an approved accreditation organization as specified at § 493.2 of this regulation may be accepted for approval of deeming authority. A city licensure agency could not be approved as an accreditation organization because the definition reflects the statutory requirement that approved accrediting bodies be private nonprofit organizations. However, HCFA may grant a CLIA exemption to laboratories licensed by a local government such as a city, provided that the city's requirements are determined by HCFA to be equal to or more stringent than CLIA requirements, and the city's authority for the regulation or licensure of laboratories has been explicitly delegated pursuant to State law. In such cases, we will view the local governmental entity as acting in its jurisdiction on behalf of the State in which it is undertaking responsibilities the State would be performing had it not explicitly empowered the local entity to perform the State's tasks. We have included a definition of State at § 493.2 to allow for such exemptions. If HCFA concludes that a State's laws authorize recognition of a local entity for State licensure or approval purpose, we will first advise the State of our conclusion and will not take any steps to recognize or approve a local entity unless the State concurs that HCFA is correctly interpreting State law.

Specific Comments

Following are comments we received on specific regulatory sections:

Section 493.501 General Requirements

Comment: One commenter requested § 493.501(a)(1)(i) be revised to require that accredited or licensed laboratories meet the specific CLIA program requirements in part 493.

Response: We cannot accept this recommendation. Laboratories deemed to meet CLIA requirements by virtue of accreditation by an approved accreditation organization will be issued a certificate of accreditation by HCFA that certifies "deemed" compliance with applicable CLIA requirements. Such a certificate indicates that the accreditation organization's requirements are equal to or more stringent than those of HCFA, and that accreditation by that organization provides reasonable assurance that the laboratory would meet CLIA requirements if inspected for them. In the absence of a CLIA inspection, such compliance is "deemed" or presumed.

On the other hand, laboratories inspected by a State that has had its laboratory program approved by HCFA are exempt from all provisions of section 353 of the Public Health Service Act, including the requirement at section 353(b) that the laboratory have a certificate that certifies compliance, or the presumption of compliance as in the case of laboratories accredited by an approved organization. Should a State have its requirements approved, then its requirements are applied in lieu of those promulgated by the Secretary in regulations pursuant to the CLIA statute. This is because HCFA has determined that the laboratories in that State satisfy a set of requirements equal to or more stringent than those specified in Federal regulation. Therefore, it would be inconsistent with the intent of the statute to require, in regulations, compliance with specific Federal requirements when the law permits compliance with equivalent or more stringent standards in the case of both accredited laboratories and CLIA exempt laboratories.

Section 493.502 Definitions

Comment: One commenter stated that the lack of definitions for general terms such as "conditions", "standards", and "requirements" causes some confusion throughout the proposed rule. The commenter stated that the term "CLIA conditions", as defined in the proposed rule, is confusing because these "conditions" that HCFA mandates are broadly stated and more analogous to the properly used term "standards", while "standards" are used in the context of very specific and detailed mandates. The commenter thought that the definition for "CLIA conditions" should be eliminated and wherever the term is used throughout subpart E, it should be replaced with "conditions and/or standards * * *"

Response: As a result of the issues raised in the above comment, we have amended the text by deleting the definition of the term "CLIA conditions" (since the definition in the enforcement procedures regulation (57 FR 2178) concerning condition level requirements is adequate) and we have clarified that the terminology describing levels of requirements may differ between that used in applicable subparts of part 493 and that used by accreditation organizations or State laboratory programs. (What we referred to as "CLIA conditions" in the proposed rule we refer to as "condition level requirements" throughout this final rule.) Because each organization can organize and identify its requirements in the manner it feels is most appropriate, the organization can establish that its requirements taken as a whole provide equal to or more stringent requirements.

We have also eliminated the proposed definitions section for this subpart, previously proposed as § 493.502, and have included all definitions at § 493.2, which is the definitions section for part 493.

Comment: A few commenters stated that the definition specified in the regulation for "HCFA agent" is not consistent with the statute.

Response: The term "HCFA agent" is not included in the CLIA legislation. HCFA made an administrative decision, based on the authority in section 353(o) of the PHSA, to provide for a "HCFA agent" for the purpose of broadening the types of entities that may be used by HCFA or a State survey agency for performing laboratory inspections. HCFA agents will be required to use HCFA forms, inspection processes and guidelines. The authority of these agents will be limited. That is, HCFA agents will provide HCFA with the laboratory inspection results and HCFA or the State survey agency will be responsible for the certifications. The definition of "HCFA agent" is included in § 493.2 of the text.

Comment: One commenter stated that proprietary organizations that would be eligible to assume survey and validation duties on behalf of HCFA should be excluded from the definition of "HCFA agents".

Response: The law explicitly states at section 353(o) of the PHSA, "In carrying out this section [section 353] the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or *nonprofit private organization* * * *." (Emphasis added) We are including in the definition of "HCFA agent" the requirement that any "private" HCFA agent must be a nonprofit entity.

Comment: Three commenters stated that HCFA's definition of "deemed status" was unclear.

Response: We accept this comment and have included further clarification at § 493.501 of this rule.

Section 493.503 Proficiency Testing Requirements of Laboratories With Deemed Status

Comment: Many commenters believed that there was no need for the accreditation organization to report proficiency testing (PT) results to HCFA. The PT organizations already do this, so this reporting by the accreditation organizations would be duplicative.

Response: Based on the comments we received, we attempted to eliminate any

duplication in the processing of test results as reflected in the proposed regulations. We have revised § 493.506 to specify that, in the case of an accredited laboratory, the accreditation organization will handle the disclosure. HCFA will receive from accreditation organizations only those PT results that constitute unsuccessful participation in the PT program and adverse action resulting from PT results constituting unsuccessful participation in PT programs. In the case of CLIA-exempt laboratories, States are required to notify HCFA only of the action(s) taken by the State as a result of that unsuccessful participation.

Therefore, we will not require the PT organizations to submit test results to HCFA from accredited laboratories. We will, instead, require that the PT organization submit test data on an ongoing basis to applicable accreditation organizations or State laboratory programs so that the accreditation organizations or State programs can maintain the test results, as necessary, to respond to disclosure requests from the public, and so that they can monitor and take necessary accreditation or licensure or approval actions. HCFA intends to include this change in its future regulations implementing CLIA '88 (HSQ–176–FC, 57 FR 7002) when we issue technical corrections to that rule.

Comment: Six commenters believed that the 30-day time period for reporting PT failures is too short.

Response: We have clarified the regulation at §§ 493.506 and 493.515 to indicate that HCFA is to receive notification of actions taken by accreditation organizations and State laboratory programs resulting from PT failures within 30 days of the imposition of the adverse action.

Comment: Two commenters believed that an accreditation organization should be prevented from restricting participation in PT programs to its own PT service. The commenter recommended that an accreditation organization should permit participation in any CLIA-approved PT program.

Response: We do not accept this recommendation. We believe that an accreditation organization or a State should have the authority to determine which CLIA-approved proficiency testing program it will use to meet CLIA's PT requirements. We will not evaluate an accreditation organization's or State's requirements in any way other than to determine equivalency to Federal requirements, including PT requirements. Whatever criteria an accreditation organization or State uses for selecting a HCFA-approved proficiency testing program to achieve equivalency is left to the discretion of those entities.

Comment: One commenter asked if the proposed rule intended that in the case of PT failures, accreditation organizations and State licensure agencies had to require onsite PT.

Response: No. State laboratory programs and accreditation organizations are expected to impose the same PT requirements as specified in the final laboratory standards regulations, HSQ–176–FC, Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (57 FR 7002). Since the PT provisions in that rule require enrollment by all laboratories with certificates in a HCFA-approved PT program, the accreditation organization or State laboratory program must impose the same requirement.

Section 493.504 Revocation of Accreditation or State Licensure

Comment: One commenter stated that the accreditation status of a laboratory should not be affected by the suspension, revocation, or limitation of that laboratory's CLIA certificate. Another comment expressed concern regarding the timing of notification to HCFA of the removal of accreditation from a laboratory for serious deficiencies that could endanger laboratory patients or the public.

Response: We do not require that the suspension, revocation or limitation of a laboratory's certificate of accreditation by us have any affect on a laboratory's status with respect to its accreditation organization. However, as a practical matter, if the laboratory's certificate of accreditation is suspended, limited or revoked, the laboratory cannot test specimens in any area covered by the sanction. Thus, being accredited in these circumstances is meaningless.

In addition, since the statute requires an approved accreditation organization to notify HCFA within 30 days of the time it revokes a laboratory's accreditation, we will also require an approved organization or State laboratory program to notify HCFA within 10 days of the time it identifies a laboratory that has deficiencies that would be considered to be an immediate jeopardy or a hazard to the public health. We are also making a technical correction at § 493.504 to remove the incorrect citation of § 493.1704 we proposed. We have also deleted reference to the CLIA '67 term "letter of exemption". We have also changed the title in the final rule so that the section does not apply to State laboratory programs.

Section 493.506 Federal Review and Initial Approval of Private Nonprofit Accreditation Organizations and State Licensure Agencies

Comment: Several commenters believed that accreditation organizations should be granted deeming authority for specialties (e.g., blood banks, cytology).

Response: We accept this comment. HCFA will allow accreditation organizations to be granted "deeming authority" for certain specialties and subspecialties (i.e., blood banking, cytology). However, this does not relieve these accreditation organizations from accountability for monitoring compliance with other related requirements that are equivalent to CLIA requirements. For example, an accreditation organization approved for blood banking would be responsible for monitoring quality control, quality assurance, personnel requirements, recordkeeping, etc. as they pertain to blood banking. The text of this rule at § 493.506 is being amended to reflect this clarification. We have also revised the title to show that the provision no longer applies to State laboratory programs.

Comment: One commenter stated that the language in proposed § 493.506(c)(4)(ii), "each analyte and", should be deleted because the rules established under the CLIA enforcement rule published on February 28, 1992 (57 FR 7218) specifically refer to suspension and termination of approval only of specialties and subspecialties.

Response: We have accepted this comment and have revised this provision to require the accreditation organization to provide only those PT results to HCFA that constitute unsuccessful participation in the PT program and to provide notification of the adverse action(s) taken by that accreditation organization or State laboratory program. References to "each analyte" have been removed from this rule. Limitation of a CLIA certificate of accreditation constitutes suspension or termination of specialties or subspecialties.

Comment: One commenter stated that proposed § 493.506(c)(1) appears to give the accreditation organization the power to deny, suspend, withdraw, or revoke a deemed laboratory's certificate of accreditation. The commenter recommended that the wording be changed to limit the authority of an accreditation organization to withdrawing accreditation and

providing the information to HCFA. If it is truly HCFA's intent to allow the accreditation organization to revoke a certificate of accreditation, then the appeal and hearing opportunities stated in proposed §§ 493.622 and 493.626 (published August 3, 1990, 55 FR 31770) should be repeated in this section.

Response: The intent of proposed § 493.506(c)(1), (redesignated as § 493.506(b)(3)(i) in this final rule) was to convey that accreditation organizations can withdraw a laboratory's accreditation. We do not allow accreditation organizations to deny, suspend, or revoke laboratory certificates, which are issued only by the Department of Health and Human Services. We are revising § 493.506(b)(3)(i) to clarify this provision.

Comment: Two commenters expressed concern that certain accreditation organizations that obtain approval or States whose laboratory program is approved may wish to impose stricter standards than those developed by HCFA. The commenters believed that the statement "an accreditation body's standards must be equal to or more stringent than those under CLIA" has been abused over the past ten years.

Response: An accreditation organization or a State is explicitly permitted in accordance with sections 353(e)(2)(A)(ii) and (p)(2) of the PHSA to establish standards that are equal to or more stringent than the standards issued by the Secretary. Since facilities are free to seek accreditation or be surveyed under our rules, we see no need to prohibit accreditation organizations from establishing more stringent standards than those of the Secretary. Additionally, the statute specifically provides that nothing in section 353 of the Public Health Service Act shall affect the power of any State to enact and enforce laws relating to these matters that are not inconsistent with the CLIA statute or implementing regulations.

Comment: One commenter stated that data requested in "ASCII code" may not be included in the computer system of the accreditation organization and would therefore be a major cost factor for revising or writing the computer programs. Another commenter stated that the requirement to transmit data in "ASCII-comparable code" is meaningless without specifications for format and variety of other specifications and details.

Response: All references to ASCII code may be interpreted as the ability to generate standard electronic data files that are capable of being processed on mainframe computers. For example, EBCDIC STANDARD 6250 BPI tape is an acceptable alternative to ASCII. File formats, record layouts, edits and procedures are being designed. When these formats are finalized, we will advise accreditation organizations applying for deeming authority and States applying for approval of their laboratory programs that data be submitted to HCFA electronically, either on magnetic tape or through electronic data transmission. We also wish to point out that in the final rule we do not require the accreditation organization or State to submit the quarterly or semiannual PT results except for the PT failures that constitute unsuccessful participation in a specialty or subspecialty. This is a change from the provision in the proposed rule that required the submission of all PT results.

Comment: One commenter indicated that approved PT programs should be required in § 493.506 to supply data to the deeming authority in electronic form in ASCII-comparable code. Otherwise, other excess paperwork that HCFA would like to eliminate to save staff time would accrue to the deeming authority.

Response: Specific requirements for information transmission for PT programs do not come under the purview of this rule. The accreditation organizations, States, and PT programs will negotiate these items.

Comment: One commenter stated that § 493.506(c)(4)(i) should be deleted. The language is duplicative of the information specified in § 493.506(b)(4).

Response: We disagree with this comment. Although proposed §§ 493.506(b)(4) and 493.506(c)(4)(i) (redesignated as §§ 493.506(b)(2)(iv) and 493.506(b)(3)(iv)(A) in this final rule) contain similar language, these provisions address different requirements. Specifically, proposed § 493.506(b)(4) establishes, as one criterion that an accreditation organization must meet to be granted "deeming authority," the ability to provide data electronically. Proposed § 493.506(c)(4) specifies the information an accreditation organization must agree to provide to be granted deeming authority. However, as previously stated we do not require all PT results to be submitted to HCFA. We have revised the requirement in this final rule to require notification of only the unsuccessful participation in a PT program and any resulting adverse action.

Comment: Two commenters indicated that many States may have the equipment to submit reports electronically but would require a reasonable period of time to establish a system for obtaining PT results by a medium that is compatible with that of the States.

Response: We are not specifying the media by which States or accreditation organizations communicate with PT organizations. We only require that data transmitted to HCFA be submitted electronically and within the designated time. We will permit a reasonable time for states and organizations to refine their electronic communication systems.

Comment: One commenter recommended that proposed § 493.506(c)(5) (redesignated in this final rule as § 493.506(b)(3)(v)) be modified so that agencies or organizations would be required to give us advance notice of changes in their "standards" rather than their "requirements."

Response: We do not accept this comment. We feel it is important that the accreditation or State laboratory program agree to notify HCFA of changes to any requirements, including its standards.

Comment: One commenter stated that under proposed § 493.506(c)(4) the requests by HCFA for data from accreditation organizations should be discrete (i.e., HCFA should not be able to request any type of data it wants at any time it wants).

Response: We do not agree that our regulations should list all specific data needs. Our interest is in obtaining sufficient data to monitor the approved accreditation organizations' surveys of facilities and to obtain the results of such surveys. The specific data needed may vary from time to time and any list of specific items may become out-of-date. Further, we need to know, the responsiveness of the organizations to cited deficiencies, and we may need to request special data quickly, depending on the circumstances. We will not make unreasonable requests, but only those necessary to monitor the organization and the laboratories they accredit.

Comment: One commenter stated that an accreditation organization's inspectors should be approved by HCFA solely by virtue of their experience and the complexity of the laboratories they inspect, instead of by HCFA's qualifications.

Response: This rule does not specify any HCFA-mandated inspector qualifications. The qualifications an accreditation organization sets for inspectors will be evaluated by HCFA as part of the approval process and will consider the complexity of laboratories inspected. The accreditation organization must employ individuals with sufficient training and experience to provide us with reasonable assurance

that laboratories surveyed by its surveyors meet the applicable requirements.

Comment: Two commenters believed that HCFA should not approve accreditation organizations that require more stringent educational and experience requirements for inspectors or surveyors than HCFA does for its surveyors.

Response: We disagree. Accreditation organizations and States have the right to make this determination.

Comment: Several commenters stated that HCFA should clarify how the adequacy of staffing, finances and other resources of an organization or State will be determined.

Response: We do not believe this level of detail should be included in regulations; rather it is a subject for operating guidelines. We intend to review the number of staff, and the financial resources of an organization to determine its ability to conduct timely surveys, respond to complaints, report to HCFA as required, train surveyors, and perform the administrative functions necessary to support the number of laboratories accredited by the organization. In addition, we have included provisions for both the initial evaluation of applications and for validation activities that permit HCFA to go onsite to the accreditation or State program offices to verify information supplied by these bodies and to observe their operations more closely.

Comment: One commenter believed that deemed status should be limited to those organizations that have structured surveying programs in place, similar to the State survey agencies. Deemed status should not be given to organizations that have indicated a serious conflict between consultation and the enforcement of requirements.

Response: Each accreditation organization is reviewed on its own merits. To ensure that each program continues to meet CLIA requirements, we will be performing annual validation reviews on each accreditation organization approved. As part of those validation reviews, we will evaluate their ability to monitor the correction of deficiencies.

Comment: One commenter stated that under § 493.506 the statement "HCFA's review of a private, nonprofit accreditation organization or State licensure agency includes, but is not necessarily limited to, an evaluation of the following:" does not indicate that the organization or agency must have the ability to provide proficiency testing specimens when onsite PT testing is conducted as required in § 493.807 of the May 21, 1990 proposed rule.

Response: The organization or agency seeking approval is not required to provide additional PT specimens when onsite monitoring of PT testing is conducted. There may be onsite monitoring by HCFA or its agent of a laboratory's testing of PT specimens when the laboratory has not participated successfully in PT and wishes to be reinstated.

Comment: In the preamble of the proposed rule, we specifically invited comments on how accreditation organizations and State laboratory programs might be able to demonstrate that certain standards, although different from the Federal approach, are indeed equally as stringent as Federal CLIA requirements in terms of protecting individuals served by a laboratory. We also invited comments on the feasibility of the development of a comprehensive crosswalk by which to compare the standards of an accreditation organization or a State to those of HCFA. We received 20 such comments, and they are summarized below.

- Eight commenters were in favor of a crosswalk comparison of CLIA requirements to those requirements of an accreditation organization. One State said that a comparative analysis of standards of accreditation organizations and State licensure agencies with those established by HCFA is not only feasible, but essential to assure consistency among groups providing deemed status.
- One commenter was undecided. The commenter believed that HCFA should publish for comment more detailed criteria governing which programs would be considered to be equivalent and which inspection processes would be considered comparable.
- Eleven commenters argued against the crosswalk comparison of HCFA requirements to those requirements of an accreditation organization. Listed below is a summary of several of the comments received that were opposed to the development of a comprehensive crosswalk.
- One commenter stated that a crosswalk or line-by-line comparative approach is a rigid mechanism that would treat all requirements as having equal importance and would not allow the organizations or agencies to make exceptions or variations that respond to a particular laboratory's needs or circumstances.
- One commenter stated that HCFA should reconsider the standards-level approach to assessing equivalency and the competency of private accrediting organizations and instead evaluate the ability of the accrediting organization to identify good and bad performance.
- One commenter indicated a concern that such a comparison would require accreditation organizations to adopt requirements virtually identical to those of HCFA, thus eroding the individuality of established programs.
- One commenter stated that the regulations should allow approved accreditation organizations to carry out their programs according to their own methods and that HCFA should simply accept accreditation awarded by their programs.

Response: We appreciate the recommendations of the commenters. We acknowledge that there is a significant amount of concern among the commenters with respect to how an accreditation organization's or a State's requirements will be reasonably compared to those requirements established by HCFA. To eliminate much of this concern, we have defined the term "equivalency" at § 493.2 to mean that an accreditation organization's or a State's requirements, taken as a whole, are equal to or more stringent than the CLIA requirements established by HCFA, taken as whole. It is acceptable for an accreditation organization's or State's requirements to be organized differently or otherwise vary from the CLIA requirements as long as (1) all of the requirements taken as a whole provide at least the same protection as the CLIA requirements taken as a whole; and (2) a finding of noncompliance with respect to CLIA requirements taken as a whole is matched by a finding of noncompliance with the accreditation or State requirements taken as a whole. We have also included a requirement that accreditation organizations applying for deeming authority, or States applying for approval of their laboratory programs, must include in their application materials a crosswalk that provides a detailed analysis that demonstrates how accreditation or licensure or approval requirements, taken as a whole, are equal to or more stringent than the condition level requirements, taken as a whole.

Comment: One commenter expressed concern that HCFA has designed criteria that essentially would use the private accrediting body merely to enforce the Federal certification standards without recognizing the independent value of the private accreditation process.

Response: As indicated above, private accreditation organization or State laboratory requirements must reasonably compare to and provide the same protection or greater as the

corresponding requirements established by HCFA. Accreditation organization and States will enforce their own requirements, which may be essentially similar to Federal requirements.

Comment: One commenter stated that the proposed rule offers private accreditation organizations little incentive to seek deeming authority and would create disincentives for laboratories to continue to seek private accreditation because they would have to submit to two largely duplicative surveys.

Response: The duplicative surveys to which the commenter referred would only be an issue in the case of a sample validation survey or a complaint survey. These surveys will represent only a small percent of the accredited or CLIA-exempt laboratories and are necessary to ensure that the accreditation program is operating properly and that the laboratories are capable of providing accurate and reliable test results and that the health of individuals served by the laboratory and that of the general public is not adversely affected by laboratory operations and by testing procedures that do not meet the standards set forth in part 493. The decision of whether to seek approval of deeming authority is at the discretion of the individual accreditation organization. In a similar way, the decision to seek accreditation and be inspected by an accreditation organization rather than the State survey agency is at the discretion of each laboratory.

Section 493.507 Validation Inspections

Comment: Three commenters believed that validation of an accreditation organization should be done by an objective party instead of the State agency, one commenter suggesting the Office of the Inspector General as a more objective party. Additionally, another commenter recommended that HCFA should delete references to "the State agency" and "HCFA agent" throughout § 493.507 and state unequivocally that "all validation inspections will be performed by HCFA personnel who have scientific and technical education and training as well as inspection experience equivalent to that specified in approved accreditation organizations."

Response: For the purpose of evaluating the survey procedures of private, nonprofit accreditation organizations, the State survey agency is an objective party and is more familiar with HCFA survey regulations and procedures than HHS components such as the Office of the Inspector General (which does not specifically deal with ongoing inspection of facilities for compliance with HCFA program participation requirements). In the case of a State that has been granted approval of its laboratory program, we will not have it or any other State agency within that State conduct validation surveys to evaluate its own operation. To clarify these requirements, we have included definitions of State survey agency and HCFA agent at § 493.2. Therefore, as necessary, we will exercise the authority at section 353(o) of the PHSA, by which the Secretary can enter into agreement with other governmental or nonprofit organizations to assist HCFA in performing validation inspections. In addition, HCFA may utilize its own Federal surveyors for validation surveys of CLIA-exempt laboratories or accredited laboratories. State agencies, HCFA, and HCFA agents will possess the necessary scientific and technical education and experience and receive the necessary training to evaluate each accreditation organization objectively.

Comment: One commenter indicated that laboratories in exempt States should be exempt from the validation process.

Response: As previously stated, we believe Congress did not intend to allow the Secretary to approve a State laboratory program without imposing reasonable conditions to ensure enforcement with equivalent requirements or without periodically re-evaluating these approvals. We believe it is a reasonable condition to re-evaluate the State's requirements through validation inspections and to remove our approval of a State laboratory program if the State's requirements are no longer equal to or more stringent than the CLIA requirements. Although section 353(p)(2) allows the Secretary to exempt clinical laboratories in a State whose requirements are equal to or more stringent than the CLIA requirements, such exemptions remain discretionary with the Secretary. Accordingly, we believe it is consistent with the statute to have in place a system that will enable us to determine if exemptions, once granted, continue to satisfy statutory requirements. If we determine that they do not, the exemptions should be revoked. We believe that the performance of validation inspections provides us with the most effective means of assuring that objective.

Comment: One commenter indicated that language pertaining to validation inspection is too rigid. Specifically, the commenter thought we ought to change the policy embodied in the statement, "If a validation inspection results in a finding that the laboratory is out of compliance with one or more CLIA conditions, the laboratory is no longer deemed to meet the CLIA condition." Deemed status should only be lifted if a laboratory fails to comply with major conditions.

Response: We cannot accept this recommendation. All condition level requirements are considered major. On the other hand, if an accreditation organization or State has received approval of an accreditation or regulatory structure that is not exact in its replication of CLIA requirements, but that compensates in other areas so that its overall standards are at least equivalent to those established under CLIA (for example, a lower standard than CLIA is offset by a more stringent standard elsewhere in the requirements pertaining to the same CLIA conditions), HCFA would accommodate those distinctions in making its validation conclusions.

Comment: One commenter recommended that § 493.507(a) be rewritten to reflect more accurately the statutory authority provided under CLIA as follows: "HCFA may require the inspection of an accredited laboratory for any reason, including to validate its organization's accreditation process or in response to substantial allegations of deficiencies."

Response: We accept this recommendation; accordingly, we have revised the text at § 493.507(a). Additionally, HCFA may inspect any laboratory exempt from CLIA under an approved State laboratory program to enable HCFA to make a continuing assessment of the ability of the State program to assure its requirements, taken as a whole, are at least as stringent as CLIA requirements, taken as a whole.

Comment: One commenter recommended that the sample size for validation inspections be at least five percent.

Response: Because the statute does not require a particular sample size for validation surveys, we will not at this point establish such a sample size through regulations.

Comment: One commenter stated that there was no time limit within which a proposed validation inspection would have to occur.

Response: Historically, such time limits for validation surveys of other accredited facilities (i.e., hospitals) have been included within HCFA's internal operating instructions. We intend for this to be the case with laboratories as well. These types of timeframes and procedures that we impose on our

agents are subject to frequent change as a function of varying workloads, staff resources and other considerations. HCFA must reserve the right to alter such procedures expeditiously as situations warrant. At the current time, the guidelines provided in our instruction manual for the interval between an accreditation survey or inspection and a corresponding validation survey or inspection of a hospital is 60 days. We anticipate establishing a similar guideline for accredited or exempt laboratories in our operating instructions.

Comment: One commenter suggested that when a validation inspection is performed in response to a substantial allegation as noted in proposed § 493.507(a)(2), HCFA should notify the accreditation organization responsible for accrediting the laboratory in question.

Response: Historically, whenever an allegation of noncompliance with health and safety requirements is made against an accredited facility, HCFA notifies the accreditation organization unless the complaint pertains to things such as billing that have nothing to do with accreditation requirements. The Joint Commission on Accreditation of Healthcare Organizations is currently an approved deeming authority for the Medicare hospital program. It recently requested that it only be notified when an inspection or survey has been conducted and only of those survey results when a condition level deficiency is substantiated. The request was made to decrease unnecessary paperwork. These new notification policies will apply to all approved accredited providers and suppliers.

Comment: One commenter stated that §§ 493.507(b)(1), 493.507(b)(2), 493.507(b)(3), 493.507(c), 493.507(e)(1) and 493.507(e)(2) are redundant with § 493.501. The commenter recommended deletion of these redundant sections.

Response: The language contained in the sections referenced in the comment above is required as part of the general format of the regulation. Section 493.501 summarized general requirements of the regulation that are subsequently addressed in greater detail.

Comment: One commenter indicated that under § 493.507(a)(2), "Validation Inspections", the requirement for a "full" CLIA inspection for a deficiency may be too extreme, depending upon the interpretation of noncompliance with any CLIA condition.

Response: As part of the substantial allegation validation survey process, HCFA has always required a full survey to be performed if the survey agency substantiates that a facility is out of compliance with a condition. The rationale is that if one condition is out of compliance at the time of the validation survey, other conditions may also be out of compliance and may have existed undetected at the time of the accreditation or State laboratory program survey.

Comment: One commenter indicated that under § 493.507(d), "Consequences of the findings of noncompliance," the statement "finding that the laboratory is out of compliance with one or more CLIA conditions" is not clear as to exactly what conditions are meant and whether this refers to severe deficiencies found on inspection or other factors mentioned in subpart N.

Response: The statement "* * * finding that the laboratory is out of compliance with one or more CLIA conditions" means that a laboratory is found through a validation inspection to be out of compliance with one or more condition level requirements.

Comment: One commenter expressed concern about HCFA's proposed review (oversight) of accreditation organizations. The commenter wanted to know HCFA's plan to control for bias and other differing interpretations of Federal standards by the oversight inspection team.

Response: The State survey agency or other HCFA agent will not have access to the accreditation survey information before performing the validation survey in order to insure the objectivity of the surveyors or oversight inspection team. To further ensure the integrity of the process, HCFA will identify prior to the validation inspection those accreditation or State requirements that vary from specific condition level requirements. These specific differences will be identified in the application and approval process. The results from both the accreditation or laboratory program survey and the validation survey are forwarded to HCFA by the responsible entities and evaluated by HCFA personnel only.

Comment: One commenter suggested that under "Validation Inspections", in the preamble of the proposed rule, laboratories should not only be selected on a random sample basis, but also on the basis of their size, volume, and complexity of testing. The commenter noted that from past selections, it seemed that small volume laboratories performing simple tests have usually been selected. The chance of finding major problems in these types of facilities is very low.

Response: Under the Social Security Act, validation inspections have historically been performed based on a representative sample methodology. A relatively large number of small volume laboratories occurring in a random sample would only occur if the universe consisted largely of these types of laboratories or if the accreditation organization or laboratory program had recently surveyed a large number of small volume laboratories. Our current sample methodology is to select from facilities surveyed by the accreditation agency within the past 60 days. We have, for clarification, also revised the regulation text to indicate that a representative (instead of "selective") sampling methodology will be used. The details of the sampling methodology will be provided in instructions to HCFA's regional offices when the validation program begins.

Comment: A few commenters indicated that the validation inspection process, deeming authority review and final determination should be applicable to accreditation programs, State licensing agencies and other HCFA agents.

Response: As stated above, approved accreditation organizations as well as approved State laboratory programs will be subject to formal validation reviews as provided at §§ 493.507 and 493.517, respectively. The "other HCFA agents" are not subject to this formal process because they are often highly specialized and very limited in the scope of their survey activities with respect to laboratories. It has, however, always been HCFA policy to require HCFA central office and/or regional office staff to evaluate the performance of these agents, including the State survey agency.

Section 493.509 Continuing Federal Oversight of an Accreditation Organization or Licensure Agency Requirements' Equivalency to HCFA Requirements

Comment: In the preamble of the proposed rule, we specifically invited comments regarding use of the 20 percent rate of disparity. We received 17 such comments as summarized below. (These provisions have now been relocated to § 493.511.)

- A major accreditation organization stated that it had no basis for challenging this criterion or any other criterion that may be imposed by the Department of Health and Human Services. It recommended that whatever criteria may be adopted be applied in an objective fashion by an unbiased entity.
- Two commenters were in favor of the 20 percent rate of disparity. One commenter stated, "Based on our own experience in laboratory accreditation, we think that a 20 percent disparity rate

is appropriate." The other commenter stated that if the validation inspections were truly standardized and controlled by HCFA agencies, the 20 percent disparity rate proposed in § 493.509(b)(i) is reasonable.

• Eleven commenters argued against the 20 percent rate of disparity. Listed below is a summary of the views of the commenters:

—Three commenters indicated that rate of disparity should be more stringent.

—One commenter preferred that no percentage figure be included in the final rule. The commenter recommended that HCFA provide a phase-in period for evaluation of accreditation organizations of at least 24 months since more than 90 percent of the laboratories falling under the CLIA regulations have been previously unregulated and will be inappropriately sanctioned. Further, the commenter held the opinion that such a 20 percent requirement may well limit the number of private accrediting organizations willing to apply for deeming authority and is counterproductive to the intent of CLIA.

—One commenter indicated that the reliability of findings depends on the sampling methodology, the size of the sample, and the statistical analysis of survey data. Therefore, in the commenter's view, selection of an arbitrary rate of disparity would be meaningless. The commenter did not believe the proposal provides enough information to allow assessment of whether a 20 percent degree of disparity would be statistically significant.

—One commenter suggested that HCFA, rather than measuring the disparity in condition level deficiencies, should evaluate the overall effectiveness of the organization at identifying poorly performing providers.

—Two commenters indicated that the rate of disparity is an untried concept and is too rigidly applied in this proposal.

—One commenter stated that the large degree of subjectivity and the ambiguities posed by different interpretations of the rule would create rates of disparity greater than or equal to the 20 percent proposed by HCFA.

—Two of the commenters suggested that the 20 percent rate of disparity was overly stringent. One said that the rate of disparity is unduly punitive and would likely result in the inability of most nonprofit accreditation organizations and State licensure agencies to acquire deemed status. The other commenter said to quantify acceptability at 80 percent is unproven and overly stringent.

Response: As indicated earlier in this rule, we have defined the term "equivalency" to mean that an accreditation organization's or State's requirements, as a whole, are equal to or more stringent than the corresponding condition level requirements, as a whole, established by HCFA. It is acceptable for an accreditation organization or a State to organize its requirements differently than the HCFA requirements or to have equivalent but not identical requirements as long as all condition level requirements are captured in the requirements of the accreditation organization or State laboratory program. For example, an accreditation organization or State may impose a less stringent standard than CLIA that is balanced or offset by a more stringent requirement elsewhere in the accreditation or State requirements pertaining to the same or related CLIA conditions. Each CLIA requirement will be reviewed for its equivalency with a corresponding requirement of the accreditation organization or State laboratory program. The comprehensive crosswalk developed and used in the approval process will permit HCFA to determine if differences in the deficiencies (i.e., failure to meet a requirement) or lack of deficiencies between validation inspections and accreditation or State inspection constitute equivalent results. In calculating the rate of disparity, HCFA will use CLIA condition level deficiencies where the accreditation organization or State laboratory program did not identify similar deficiencies. It is possible that the "comparable condition-level" requirements of the accreditation organization or the State laboratory program are not called "conditions." It could be that during the initial development of a crosswalk between the CLIA requirements and those of the accreditation organization or State, a determination was made that a particular condition level requirement is equivalent in terms of level and constituent lower level requirements to a requirement of the accreditation organization or State or to some combination of requirements, including those instances where less stringent requirements are balanced by more stringent requirements elsewhere. In that case, in calculating the rate of disparity, HCFA will only use those CLIA condition level deficiencies where the accreditation organization or State laboratory program did not identify deficiencies with its own requirements, when clearly noncompliance with the accreditation or State requirements resulted in the finding of noncompliance by HCFA. As indicated previously, HCFA will accommodate these distinctions in making validation conclusions. We believe that by using this approach the 20 percent rate of disparity becomes more understandable and predictable. The ultimate result of this approach is an objective comparison between requirements established by an accreditation organization or State laboratory program and those of HCFA and a determination as to whether or not accredited and licensed or approved laboratories are surveyed against equivalent requirements. We have tried to ensure against the possibility that the threshold rate of disparity may, with experience, need to be adjusted by revising the rate of disparity definition at § 493.2 (originally proposed in § 493.502) and adding the phrase "and it is reasonable to conclude that the deficiencies were present at the time of an accreditation or State laboratory program's survey". Additionally, where validation findings exhibit any disparity with respect to the findings of an accreditation organization or a State, we expect the accreditation organization or State to demonstrate an improvement in the equivalency of its findings over time. Therefore, in addition to the deeming authority review that must be implemented at the 20 percent threshold, we will also institute a deeming authority review whenever the validation inspection findings, irrespective of the rate of disparity, indicate widespread or systematic problems in an accreditation organization's processes that provide evidence that the organization's requirements are no longer equivalent to the CLIA requirements taken as a whole. In either instance, HCFA may impose a conditional approval for a probationary period not to exceed one year any time a deeming authority review is undertaken. We are moving the criteria that will or may trigger a validation review from proposed § 493.509(b) to § 493.511(a), which already partly addresses the issue.

We have revised the title of § 493.509 to show that the provision applies only to accreditation organizations. We have included a similar provision for States at § 493.519 of this rule.

Since approval of a State laboratory program will be granted for a six-year period, the results of the validation inspections will be used as a criterion in determining whether the approval of the State laboratory program can be

renewed, when an approved State laboratory program applies for such renewal. At the conclusion of the six year term, any approved organization or State laboratory program will have to reapply. The nature of the materials we will require as part of the reapplication submission will be based on a range of issues, including performance as indicated by the results of validation activities, analysis of data relating to deemed activity, changes in the accreditation or State program over the term of the approval and the scope of any changes made to the CLIA program or its requirements. In addition, we will also determine if the reapplication process should occur more frequently than every six years for that particular accreditation organization or State and inform the organization or State of the shorter approval period.

A State approval will also include a provision making the exemption biennially subject to automatic cancellation if the State fails to pay assessed fees. We believe this two-year renewable term will facilitate expedient termination of a State's approval when a technically sophisticated regulations program is compromised by inadequate financial backing. Moreover, the automatic cancellation process would serve to minimize the losses to the user-financed CLIA program, without embarrassing the State by having approval withdrawn for poor performance.

Comment: One commenter stated that the disparity might be single inspector-dependent and not typical of the remaining inspectors.

Response: A consensus among survey inspectors must be reached and the inspection must be reviewed by supervisory staff in the State survey agency before a provider or supplier is formally notified of deficiencies. The cited deficiencies are indicated on the inspection forms and should be considered representative of the inspection team, not a single individual.

Comment: The legislation requires that an accreditation organization notify HCFA 30 days in advance before a change in its standards so that HCFA may have an opportunity to review the changes. One commenter recommended that under comparability review, if an accreditation organization or State laboratory program makes any significant change in its personnel requirements, then the changed personnel requirements should be subject to public comment.

Response: We do not accept this recommendation. It is not feasible under a comparability review to solicit public comments each time any changes occur in an accreditation organization's or a State's requirements, personnel or otherwise. This process would be too cumbersome and would imply that personnel requirements should be considered more important than other requirements established by the accreditation organization or State laboratory program. However, should a decision be made that these changes result in a determination that the requirements are no longer equivalent, action would be taken as outlined in §§ 493.511 and 493.521 (which concerns probation and possible removal of deeming authority or approval of a State laboratory program). We seek public comment on the policies that we incorporate into regulations. After those regulations become final, we then execute those policies. The determination of comparability of personnel requirements is only one instance of the implementation of policy for which we are responsible.

Comment: One commenter recommended that HCFA personnel and the approved accreditation organization's personnel jointly examine the inspection findings and disparities before any adverse action against the laboratory is imposed.

Response: We do not accept the comment. If the results of the validation inspection warrant HCFA taking an adverse action against a laboratory, HCFA will do so. We will, however, notify the approved accreditation organization of our action. We believe this process assists in maintaining the objectivity and integrity of the program and is consistent with past practice for the accreditation program for hospitals. If necessary, for CLIA-exempt laboratories HCFA will seek action through the courts.

Comment: One commenter questioned the provision in proposed § 493.509(b)(2)(i) that requires HCFA to notify an organization that is not meeting our regulations requirements. The commenter stated that the term "requirements" is vague and should be deleted.

Response: We agree and have made the change in the regulations text.

Comment: One commenter recommended that the opportunity to explain or justify any findings or discrepancies noted during the validation review be mandatory rather than optional.

Response: We agree that the opportunity for an accreditation organization or State to explain or justify any findings or discrepancies noted during a comparability or validation review should be mandatory and we feel the regulation reflects this situation. However, we cannot force an accreditation organization or State laboratory program to exercise its rights.

Comment: Several commenters expressed concern that there is no appeal mechanism available for accreditation organizations to use when HCFA withdraws its approval from such organizations.

Response: We agree with the commenter that such procedures are necessary and we have amended Part 488 of the regulations to provide a reconsideration mechanism for the removal of deeming authority from accreditation organizations. We have also incorporated the same reconsideration procedure for States whose request for approval of a laboratory program has been denied, or States whose approval has been removed. We are adding this provision to the rule to help assure that accreditation organizations and States with approved laboratory programs have a fair opportunity to contest adverse HCFA decisions affecting their status under the CLIA program. This procedure encompasses the opportunity for an informal hearing before a hearing officer at which time the affected parties may submit evidence and argument either in writing or orally. In this way, affected parties may help shape the contents of the administrative record that will underlie the agency's final decision. The reconsideration procedure will be made available only after the effective date of HCFA's decision to deny, withdraw, or not renew, as appropriate, the entity's approval under CLIA. We considered other alternatives but concluded that by the time an organization or State faces withdrawal of its approved status, it will have had extensive and lengthy opportunities not just to be apprised of its deficiencies, but to correct them as well. Every effort will already have been made by HCFA to accommodate the entity's interests in retaining its approved status, such that an adverse action will be the culmination of steps that have led HCFA to believe that it cannot realistically expect the necessary corrective actions to be taken.

Additionally, the reconsideration process will include an opportunity for the Administrator to review the hearing officer's decision to either affirm, modify, or reverse that decision. If the Administrator does not choose to assert that review authority within 30 days of the hearing decision, the hearing officer's decision will constitute final administrative action. Once there is a

final agency decision on the matter, the results will be published in the Federal Register.

Section 493.511 Deeming Authority and Final Determination Review

Comment: One commenter disagreed that accreditation organizations or States should be placed on probation due to lack of comparability between requirements and problems of poor performance. This commenter stated that an alternative, a continuum of sanctions including probation, suspension, termination and various forms of civil monetary penalties, should be allowed to be continued up to a year.

Response: We have revised the regulations language in §§ 493.509(c) and 493.519(c) to reflect that reapplication for HCFA approval is required by accreditation organizations and State programs at least every six years and permits HCFA to compel an organization or State to submit reapplication materials at any time. We will request those materials when a comparability or validation review indicates that the organization or State is not meeting the requirements of Part 493, Subpart E. We have no authority under the statute to impose suspension, termination, or civil money penalties on the accreditation organization or State for lack of comparability between requirements or problems of poor performance. In the case of poor performance, a probationary period of up to a year will frequently be necessary to allow for correction of systemic performance problems and for HCFA to validate through surveys whether or not performance has improved.

Comment: One commenter indicated that under § 493.511(b), by which conditional approval is given for a probationary period of six months to adopt comparable requirements, some flexibility in this time period might be advisable, especially where a State or city laboratory program must go through a time consuming process in order to revise existing laws and regulations.

Response: We agree with this comment and have revised the regulation at § 493.511(b) to provide a probationary period of up to one year to adopt comparable requirements. As previously discussed, the statute does not explicitly authorize exemption from CLIA requirements based on city laws unless the State has expressly delegated laboratory licensure and oversight responsibility to the city, so that the city acts as the State's agent under State law.

Regulatory Impact

In the preamble of the proposed rule, under the section entitled "Executive Order 12291", we specifically requested comments regarding the extent to which new requirements imposed by this rule and the proposed rule, "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) (55 FR 20896, May 21, 1990), would affect pricing schemes of accreditation organizations. We received four such comments from six commenters. A summary of the comments are as follows:

Comment: One accreditation organization believed that its accreditation fee will have to at least double if it is approved as an accreditation organization by HCFA. This increase will be primarily a consequence of increased paperwork, additional computer programming, data processing, and increased staff to comply with the proposed unrealistic time guidelines, etc.

Response: We recognize that the accreditation fee that some accreditation organizations charge may be increased above current charges. However, until we can review applications from accreditation organizations and States against the new CLIA requirements that were published February 28, 1992 (57 FR 7002), we cannot determine whether or not an accreditation organization's or State laboratory program's requirements are comparable to ours. Until that determination can be made, we cannot determine how extensive the changes are that such organizations will have to make, nor how costly those procedural enhancements will be. In either case, the decision to seek approval of deeming authority or of a State laboratory program is voluntary on the part of the organization or State.

Comment: Two commenters believed that if several States received deeming authority, and each of these States require licensure of all laboratories doing business within those States, then the cost may exceed $100 million. Large interstate commerce laboratories would have to pay licensure fees in several States or stop receiving specimens from those States.

Response: We do not have the authority to dictate to a State the requirements a laboratory must meet in order to operate within that State's jurisdiction. Our concern is whether a laboratory meeting those State requirements can be exempted from meeting CLIA requirements. We do wish to point out to the commenter that, for CLIA purposes, interstate laboratories may receive specimens from many States, but a CLIA certificate is required only in those States where testing is actually performed.

Comment: One commenter agreed with the spirit of the CLIA proposed regulation but felt that several portions of the text, if implemented, would be expensive, cumbersome and counterproductive.

Response: We have performed an assessment of the projected costs and other impacts of this regulation to the best of our ability, given the scarcity of data. We have, in developing our proposal and this final regulation, attempted to remain cognizant of the impacts on all involved parties. However, our major objective is to implement the CLIA requirements and thereby ensure reliable test results and the health of the individuals served by laboratories.

We refer the reader to the Regulatory Impact Analysis contained in HSQ–176–FC, Regulations Implementing the Clinics Laboratory Improvement Amendments of 1988, published on February 28, 1992 (57 FR 7002), which addresses the impact of the entire CLIA program.

Comment: Two commenters stated that we should reimburse the accreditation organization for any costs incurred by the organization for the collection, processing, and transmission of the data to HCFA.

Response: We acknowledge that there may be additional costs incurred by the accreditation organization or State laboratory program for the collection, processing, and transmission of the data required by HCFA. We will limit our requests to essential data only. There are no constraints on accreditation organizations and laboratory programs to set their fee schedules to meet the costs of managing their programs. We published in the Federal Register on February 28, 1992 (57 FR 7188) a final rule stating that our fee for laboratories that participate by virtue of a certificate of accreditation would be considerably less than laboratories needing a full inspection.

Summary of Revisions

We are adopting the proposed rule as final after making the following revisions that were discussed in detail earlier in the preamble to this final rule.

- In § 493.2, we add a clarification to show that laboratories are not required to be accredited by a private nonprofit accreditation organization. However, they have no choice regarding State approval or licensure. We also transfer all proposed definitions from § 493.502

to § 493.2 and make a number of clarifying technical revisions. We have separated the definitions of "approved accreditation organization" and what we called "State licensure agency" and now refer to as "State laboratory program". We also distinguish between the State laboratory program and the State survey agency by including a definition of each. In response to comments, we have added a definition of "equivalency". We also show that the rate of disparity is based on sample validation inspections and a reasonable conclusion that deficiencies cited by HCFA were present at the time the accreditation organization or State surveyed the laboratory. We include a definition of "CLIA-exempt laboratory" (which revises what we proposed as "State-exempt") and have added a definition of "State" to indicate that under certain narrowly defined circumstances a local government could qualify for approval of its laboratory program. We clarify that "validation review period" is a one year period and that it follows the most recent surveys performed by the accreditation organization or State.

• We have removed all references to State licensure and State laboratory programs from proposed §§ 493.501 through 493.511 and placed provisions concerning State licensure agencies in §§ 493.513 through 493.521. (Changes to §§ 493.513 through 493.521 parallel those in §§ 493.501 through 493.511.)

The nomenclature changes in the above two bullets reflect the fact that some States may not license their laboratories but instead approve them for operation in some other way and that the laboratories, rather than the State, are exempt from CLIA requirements.

• In § 493.501(a)(1), we clarify that accredited laboratories must meet requirements equivalent to condition level requirements. (Throughout the final rule we change all references from "CLIA conditions" to "condition level requirements" for clarity.)

• In § 493.501 we add a paragraph (c) to set forth the application process.

• In § 493.501, we add a paragraph (d)(4) to show that accreditation organizations can be approved for a maximum period of six years.

• We clarify in paragraph (e) (redesignated from paragraph (b) in the proposed rule) that we publish a notice when we grant deeming authority to an accreditation organization, rather than when we determine that a laboratory is deemed to meet condition level requirements, and that the notice will specify the term of approval.

• In § 493.503(b)(2) we update cross references and in § 493.503(b)(3) we clarify that the laboratory must authorize its accreditation organization to submit to HCFA the PT results that constitute unsuccessful participation in the PT program, and a notification of the accreditation organization's adverse actions resulting from the PT failures within 30 days of the imposition of the adverse action (rather than the notice of the failure).

• We add a paragraph (4) to § 493.503(b) to show that on the basis of notification of adverse actions we may take an adverse action against a laboratory that fails to participate successfully in a PT program.

• We make clarifying revisions in § 493.504 to be consistent with other revisions.

• In § 493.506, we make several clarifying changes concerning PT results and the codes in which they are transmitted. We also show that an accreditation organization may request and be granted "deeming authority" for specific specialty or subspecialty areas. We revise the title to no longer limit the section's applicability to initial approval.

• In § 493.507(a), we change "selective" sample to "representative" sample.

• We have redesignated the proposed paragraph (e) at § 493.507 as paragraph (c)(2)(i)-(iii) and added a new paragraph (e) to reflect that accreditation survey results are disclosable, a provision proposed at § 493.507(b). However, for Medicare participating laboratories, they are disclosable only if they are related to an enforcement action taken by the Secretary. This revision is being made to conform with the language previously included in the preamble of the proposed rule (55 FR 33940), which we inadvertently neglected to include in the regulations text. Section 6019 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), enacted December 19, 1989, amended section 1865(a) of the Social Security Act to allow the Secretary to disclose an accreditation survey and information related to it to the extent the survey and information are related to an enforcement action taken by the Secretary for Medicare participating laboratories. For laboratories that have a CLIA certificate but do not participate in Medicare, disclosure of surveys are governed by the provisions of the Freedom of Information Act. (5 U.S.C. 552)

• We are also adding a new paragraph (f) to provide for our onsite observation of accreditation organization operations.

• In §§ 493.509 and 493.519, we make several clarifying revisions for consistency and move the criteria for triggering a validation review from § 493.509 to § 493.511. We also add the reapplication procedures that are to be followed every six years or sooner if the approval or CLIA exemption is in jeopardy. We also add that our notice to the organization or State will indicate what reapplication materials we need and, in cases not involving routine reapplication, give a deadline for their submission.

• In § 493.511, we give accreditation organizations that fail to adopt requirements comparable to condition level requirements a probationary period of up to but not more than one year (rather than six months) to adopt comparable requirements. We also make some technical revisions. In new paragraph (i) we provide for our immediate withdrawal of our approval of deeming authority of an accreditation organization in situations involving immediate jeopardy.

• We remove our proposed deletion of §§ 493.1701(b)(4) and 493.1708 as they were already replaced, on February 28, 1992 (57 FR 7002).

• In §§ 493.511 and 493.521 and new subpart D in part 488 we give the accreditation organizations and States reconsideration rights.

• In § 493.513 we revise paragraph (a) to show that a laboratory in an approved State laboratory program is exempt from CLIA program requirements for a period not to exceed six years. We also revise paragraph (k) to add the term of approval to the public notice content.

• In § 493.521 we revise paragraph (g) to show that HCFA will not renew the approval of a State laboratory program if the State fails to pay the applicable fees to pay for validation costs.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all accreditation organizations as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule revises the August 20, 1990 proposed rule with comment period, based on comments submitted by the public. Changes made as a result of comments received are summarized in the Comments and Responses section of this preamble. We do not believe that any of the changes incorporated into this final rule as a result of the comments would have any significant impact and we are therefore not preparing an analysis with respect to them.

Although we do not believe that the changes in this document will have a significant impact, we do acknowledge that there could be some impact on accredited laboratories and on laboratories in States with approved laboratory programs, especially with respect to use of accreditation or State exemption as a means of demonstrating compliance with CLIA requirements.

Inasmuch as these accredited or CLIA-exempt laboratories will be required to meet requirements that have equivalency with CLIA requirements, the impact on these laboratories will not differ substantially from the impact experienced by all laboratories as a result of the promulgation of the related final rules, HSQ-176-FC, Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (57 FR 7002) and HSQ-179-F, Enforcement Procedures for Laboratories (57 FR 7218). The regulatory impact analysis that accompanies HSQ-176-FC explains the overall regulatory impact of all CLIA provisions, including those implemented under this rule.

Paperwork Burden

Section 493.506 of this rule contains information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. These collections require an accreditation organization or State laboratory program to agree to notify us of certain survey and PT results and certain actions and provide us with reports and other information as needed. Public reporting burden for these collections of information is estimated to be one hour per response for each organization and agency every two years.

A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 493

Laboratories, Medicare, Medicaid, Health facilities, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR chapter IV is amended as set forth below:

A. Part 488 is amended as follows:

PART 488—SURVEY AND CERTIFICATION PROCEDURES

1. The authority citation for part 488 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a) and secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, 1883, 1913 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

2. Part 488 is amended by adding a new subpart D to read as follows:

Subpart D—Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs

Sec.

§ 488.201 Reconsideration.

(a) *Right to reconsideration.* (1) A national accreditation organization dissatisfied with a determination that its accreditation requirements do not provide (or do not continue to provide) reasonable assurance that the entities accredited by the accreditation organization meet the applicable CLIA requirements is entitled to a reconsideration as provided in this subpart.

(2) A State dissatisfied with a determination that the requirements it imposes on laboratories in that State and under the laws of that State do not provide (or do not continue to provide) reasonable assurance that laboratories licensed or approved by the State meet applicable CLIA requirements is entitled to a reconsideration as provided in this subpart.

(b) *Eligibility for reconsideration.* HCFA will reconsider any determination to deny, remove or not renew the approval of deeming authority to private accreditation organizations, or any determination to deny, remove or not renew the approval of a State laboratory program for the purpose of exempting the State's laboratories from CLIA requirements, if the accreditation organization or State files a written request for a reconsideration in accordance with paragraphs (c) and (d) of this section.

(c) *Manner and timing of request for reconsideration.* (1) A national accreditation organization or a State laboratory program described in paragraph (b), dissatisfied with a determination with respect to its deeming authority, or, in the case of a State, a determination with respect to the exemption of the laboratories in the State from CLIA requirements, may request a reconsideration of the determination by filing a request with HCFA either directly by its authorized officials or through its legal representative. The request must be filed within 60 days of the receipt of notice of an adverse determination or nonrenewal as provided in subpart A of part 488 or subpart E of part 493, as applicable.

(2) Reconsideration procedures are available after the effective date of the decision to deny, remove, or not renew the approval of an accreditation organization or State laboratory program.

(d) *Content of request.* The request for reconsideration must specify the findings or issues with which the accreditation organization or State disagrees and the reasons for the disagreement.

§ 488.203 Withdrawal of request for reconsideration.

A requestor may withdraw its request for reconsideration at any time before the issuance of a reconsideration determination.

§ 488.205 Right to informal hearing.

In response to a request for reconsideration, HCFA will provide the accreditation organization or the State laboratory program the opportunity for an informal hearing as described in § 488.207 that will—

(a) Be conducted by a hearing officer appointed by the Administrator of HCFA; and

(b) Provide the accreditation organization or State laboratory program the opportunity to present, in writing or in person, evidence or documentation to refute the determination to deny approval, or to withdraw or not renew deeming authority or the exemption of a State's laboratories from CLIA requirements.

§ 488.207 Informal hearing procedures.

(a) HCFA will provide written notice of the time and place of the informal hearing at least 10 days before the scheduled date.

(b) The informal reconsideration hearing will be conducted in accordance with the following procedures—

(1) The hearing is open to HCFA and the organization requesting the reconsideration, including—

(i) Authorized representatives;

(ii) Technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts); and

(iii) Legal counsel;

(2) The hearing is conducted by the hearing officer who receives testimony and documents related to the proposed action;

(3) Testimony and other evidence may be accepted by the hearing officer even though it would be inadmissable under the usual rules of court procedures;

(4) Either party may call witnesses from among those individuals specified in paragraph (b)(1) of this section; and

(5) The hearing officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

§ 488.209 Hearing officer's findings.

(a) Within 30 days of the close of the hearing, the hearing officer will present the findings and recommendations to the accreditation organization or State laboratory program that requested the reconsideration.

(b) The written report of the hearing officer will include—

(1) Separate numbered findings of fact; and

(2) The legal conclusions of the hearing officer.

§ 488.211 Final reconsideration determination.

(a) The hearing officer's decision is final unless the Administrator, within 30 days of the hearing officer's decision, chooses to review that decision.

(b) The Administrator may accept, reject or modify the hearing officer's findings.

(c) Should the Administrator choose to review the hearing officer's decision, the Administrator will issue a final reconsideration determination to the accreditation organization or State laboratory program on the basis of the hearing officer's findings and recommendations and other relevant information.

(d) The reconsideration determination of the Administrator is final.

(e) A final reconsideration determination against an accreditation organization or State laboratory program will be published by HCFA in the **Federal Register.**

B. Part 493 is amended as follows:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act and secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12) and 1861(s)(13) of the Social Security Act (42 U.S.C. 263a, 1302, the sentence following sec. 1395x(s)(11), and sec. 1395x(s)(12) and (s)(13).)

2. The table of contents for part 493 is amended by adding a new subpart E to read as follows:

PART 493—LABORATORY REQUIREMENTS,

* * * * *

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

Sec.

3. Section 493.2 is amended by adding definitions of "Approved accreditation organization for laboratories," "Approved State laboratory program," "CLIA-exempt laboratory", "Equivalency," "Rate of disparity," "State," "State licensure," "State survey agency," and "Substantial allegation of noncompliance" and "Validation review period", and by deleting the definition of "State-exempt laboratory" and by adding the definitions of "Accredited laboratory" and "HCFA agent" to read as follows:

§ 493.2 Definitions.

* * * * *

Accredited laboratory means a laboratory that has voluntarily applied for and been accredited by a private, nonprofit accreditation organization approved by HCFA in accordance with this part;

Approved accreditation organization for laboratories means a private, nonprofit accreditation organization that has formally applied for and received HCFA's approval based on the organization's compliance with this part.

Approved State laboratory program means a licensure or other regulatory program for laboratories in a State, the requirements of which are imposed under State law, and the State laboratory program has received HCFA approval based on the State's compliance with this part.

* * * * *

CLIA-exempt laboratory means a laboratory that has been licensed or approved by a State where HCFA has determined that the State has enacted laws relating to laboratory requirements that are equal to or more stringent than CLIA requirements and the State licensure program has been approved by

HCFA in accordance with subpart E of this part.

* * * * *

Equivalency means that an accreditation organization's or a State laboratory program's requirements, taken as a whole, are equal to or more stringent than the CLIA requirements established by HCFA, taken as whole. It is acceptable for an accreditation organization's or State laboratory program's requirements to be organized differently or otherwise vary from the CLIA requirements, as long as (1) all of the requirements taken as a whole would provide at least the same protection as the CLIA requirements taken as a whole; and (2) a finding of noncompliance with respect to CLIA requirements taken as a whole would be matched by a finding of noncompliance with the accreditation or State requirements taken as a whole.

HCFA agent means an entity with which HCFA arranges to inspect laboratories and assess laboratory activities against CLIA requirements and may be a State survey agency, a private, nonprofit organization other than an approved accreditation organization, a component of HHS, or any other governmental component HCFA approves for this purpose. In those instances where all of the laboratories in a State are exempt from CLIA requirements, based on the approval of a State's exemption request, the State survey agency is not the HCFA agent.

* * * * *

Rate of disparity means the percentage of sample validation inspections for a specific accreditation organization or State where HCFA, the State survey agency or other HCFA agent finds noncompliance with one or more condition level requirements but no comparable deficiencies were cited by the accreditation organization or the State, and it is reasonable to conclude that the deficiencies were present at the time of the most recent accreditation organization or State licensure inspection.

Example: Assume the State survey agency, HCFA or other HCFA agent performs 200 sample validation inspections for laboratories accredited by a single accreditation organization or licensed in an exempt State during a validation review period and finds that 60 of the 200 laboratories had one or more condition level requirements out of compliance. HCFA reviews the validation and accreditation organization's or State's inspections of the validated laboratories and determines that the State or accreditation organization found comparable deficiencies in 22 of the 60 laboratories and it is reasonable to conclude that deficiencies were present in the remaining 38 laboratories at the time of the accreditation organization's or State's inspection. Thirty-eight divided by 200 equals a 19 percent rate of disparity.

* * * * *

State includes, for purposes of this part, each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and a political subdivision of a State where the State, acting pursuant to State law, has expressly delegated powers to the political subdivision sufficient to authorize the political subdivision to act for the State in enforcing requirements equal to or more stringent than CLIA requirements.

State licensure means the issuance of a license to, or the approval of, a laboratory by a State laboratory program as meeting standards for licensing or approval established under State law.

State survey agency means the State health agency or other appropriate State or local agency that has an agreement under section 1864 of the Social Security Act and is used by HCFA to perform surveys and inspections.

Substantial allegation of noncompliance means a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles) that, if substantiated, would have an impact on the health and safety of the general public or of individuals served by a laboratory and raises doubts as to a laboratory's compliance with any condition level requirement.

* * * * *

Validation review period means the one year time period during which HCFA conducts validation inspections and evaluates the results of the most recent surveys performed by an accreditation organization or State laboratory program.

4. A new subpart E is added to read as follows:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

§ 493.501 General requirements for accredited laboratories.

(a) *Deemed status.* HCFA may deem a laboratory to meet all the applicable CLIA program requirements of this Part if the laboratory is accredited by a private, nonprofit accreditation organization for laboratories that—

(1) Provides reasonable assurance to HCFA that it requires the laboratories it accredits to meet all of the requirements equivalent to the CLIA condition level requirements specified in this part and would, therefore, meet condition level requirements if those laboratories had not been granted deemed status and had been inspected against condition level requirements; and

(2) Meets the requirements of § 493.506 of this subpart.

(b) *Laboratory requirements.* To be deemed to meet the applicable CLIA program requirements, a laboratory accredited by a private, nonprofit accreditation organization must—

(1) Authorize its accreditation organization to release to HCFA all records and information required by HCFA;

(2) Permit inspections as required by these regulations;

(3) Obtain a certificate of accreditation as required by § 493.632 of this part; and

(4) Pay the applicable fees as required by §§ 493.638 and 493.645 of this part.

(c) *Application and reapplication process for accreditation organizations.* In applying or reapplying to HCFA for deeming authority, a private nonprofit accreditation organization must provide the following information to the Administrator of HCFA—

(1) The specialty(ies) or subspecialty(ies) for which the organization is requesting "deeming authority";

(2) A detailed comparison of individual accreditation requirements with the comparable condition level requirements; i.e., a crosswalk;

(3) A detailed description of the inspection process, including the frequency of inspections, copies of inspection forms, instructions, and guidelines, a description of the review and decision-making process of accreditation inspections and a description of the steps taken to monitor the correction of deficiencies;

(4) A description of the process for monitoring proficiency testing (PT) performance, including action to be taken in response to unsuccessful participation in an approved PT program;

(5) A description of the accreditation organization's data management and analysis system with respect to its inspection and accreditation decisions, including the kinds of routine reports and tables generated by the system;

(6) Detailed information concerning the personnel who perform accreditation inspections, including but not limited to the size and composition of individual accreditation inspection teams, education and experience requirements

that those inspectors must meet and the content and frequency of the training provided to inspection personnel;

(7) Procedures to investigate and respond to complaints against accredited laboratories;

(8) A list of any currently accredited laboratories and the expiration date of each laboratory's accreditation;

(9) Procedures for making PT information available, including explanatory information required to interpret PT results, on a reasonable basis, upon request of any person;

(10) Procedures for removal or withdrawal of accreditation status for laboratories that fail to meet the organization's standards;

(11) A proposed agreement between the accreditation organization and HCFA with respect to the notification requirements specified in § 493.506(b)(3) of this subpart; and

(12) Whether accreditation inspections are announced or unannounced.

(d) *Application review process.* Once HCFA receives an application for deeming authority from a private nonprofit accreditation organization—

(1) HCFA will determine if additional information is necessary to make a determination for approval of the accreditation organization's application for deeming authority and will so notify the organization and give it an opportunity to provide the additional information.

(2) HCFA may visit the organization's offices to verify representations made by the organization in its application, including, but not limited to, review of documents and interviews with the organization's staff.

(3) The accreditation organization will receive a formal notice from HCFA stating whether the request for deeming authority has been approved or denied and the rationale for any denial.

(4) HCFA may approve an accreditation organization for a period not to exceed six years.

(5) An accreditation organization may withdraw its application for approval of deeming authority at any time prior to the official notification specified in paragraph (d)(3) of this section.

(6) Except as provided in paragraph (d)(8) of this section, any accreditation organization whose request for approval of deeming authority is denied may request, within 60 days of the notification of the denial, that its original application be reconsidered.

(7) Except as provided in paragraph (d)(8) of this section, any accreditation organization whose request for approval of deeming authority has been denied may resubmit its application if the organization—

(i) Has revised its accreditation program to address the rationale for denial of its previous request;

(ii) Can demonstrate that it can provide reasonable assurance that its accredited facilities meet condition level requirements; and

(iii) Resubmits the application in its entirety.

(8) If an accreditation organization has requested, in accordance with part 488, subpart D of this chapter, a reconsideration of HCFA's determination that its request for deeming approval is denied, it may not submit a new application for deeming authority until a final reconsideration determination is issued.

(e) *Publication of names of approved accreditation organizations.* HCFA publishes a notice in the **Federal Register** when it grants deeming authority to an accreditation organization under paragraph (a) of this section. The notice—

(1) Names the accreditation organization;

(2) Describes the basis for granting deeming authority to the accreditation organization;

(3) Describes how the accreditation organization provides reasonable assurance to HCFA that laboratories accredited by the organization meet CLIA requirements equivalent to those specified in this part and would, therefore, meet CLIA requirements if those laboratories had not been granted deemed status, but had been inspected against condition level requirements; and

(4) Specifies a term of approval not to exceed six years.

§ 493.503 Proficiency testing requirements of laboratories with deemed status.

(a) *General.* A laboratory deemed to meet condition level requirements must meet the proficiency testing (PT) requirements of this part.

(b) *Release of PT results.* (1) A laboratory deemed to meet condition level requirements must authorize its PT organization to furnish to its accreditation organization the results of the laboratory's participation in an approved PT program for the purpose of monitoring a laboratory's PT and for making the annual PT results, along with explanatory information required to interpret the PT results, available on a reasonable basis, upon request of any person.

(2) A laboratory that refuses to authorize the release of its PT results will no longer be deemed to meet the condition level requirements and will be subject to full review by HCFA, the State survey agency, or other HCFA agent in accordance with § 493.1777 of this chapter and may be subject to the suspension or revocation of its certificate of accreditation under § 493.1840 of this part.

(3) A laboratory with deemed status that has failed to achieve successful participation in an approved PT program must authorize its accreditation organization to release to HCFA its PT results that constitute unsuccessful participation in an approved PT program, in accordance with the definition of "unsuccessful participation in an approved PT program" as specified in this part. Such a laboratory must also authorize its accreditation organization to release to HCFA a notification of the actions taken by the organization as a result of the unsuccessful participation in a PT program within 30 days of the initiation of such actions.

(4) HCFA may, on the basis of the notification of adverse actions received from the accreditation organization, take an adverse action against a laboratory that fails to participate successfully in an approved PT program.

§ 493.504 Revocation of accreditation.

After a private, nonprofit accreditation organization withdraws or revokes its accreditation of a laboratory, the certificate of accreditation required by this part will continue in effect until the earlier of—

(a) 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation; or

(b) The effective date of any action taken by HCFA.

§ 493.506 Federal review and approval of private, nonprofit accreditation organizations.

(a) An accreditation organization may request and may be granted "deeming authority" for all specialties and subspecialties or for specific specialty or subspecialty areas. In the latter case, the accreditation organization will be accountable for the monitoring of compliance with all requirements equivalent to condition level requirements within the scope of the specialty or subspecialty.

(b) HCFA's review of a private, nonprofit accreditation organization includes, but is not necessarily limited to, an evaluation of the following—

(1) Whether the accreditation organization's requirements for laboratories are equal to or more

stringent than the condition level requirements for laboratories;

(2) The accreditation organization's inspection process to determine—

(i) The composition of the inspection team, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to inspectors;

(ii) The comparability of the organization's full inspection and complaint inspection requirements to those of HCFA, including but not limited to inspection frequency, and the ability to investigate and respond to complaints against accredited laboratories;

(iii) The organization's procedures for monitoring laboratories found to be out of compliance with its requirements. (These monitoring procedures are to be used only when the accreditation organization identifies noncompliance. If noncompliance is identified through validation inspections, HCFA, the State survey agency, or other HCFA agent monitors corrections as authorized at § 493.507(b)(4) of this subpart);

(iv) The ability of the organization to provide HCFA with electronic data and reports, including the crosswalk specified in § 493.501(c)(2), in ASCII-comparable code that are necessary for effective validation and assessment of the organization's inspection process;

(v) The ability of the organization to provide HCFA with electronic data in ASCII-comparable code related to the adverse actions resulting from PT results constituting unsuccessful participation in PT programs as well as data related to the PT failures, within 30 days of the initiation of adverse action;

(vi) The ability of the organization to provide HCFA with electronic data in ASCII-comparable code for all accredited laboratories, including the area of specialty or subspecialty;

(vii) The adequacy of numbers of staff and other resources; and

(viii) The organization's ability to provide adequate funding for performing required inspections; and

(3) The organization's agreement with HCFA that requires it to:

(i) Notify HCFA of any laboratory accredited by the organization that has had its accreditation withdrawn, revoked or limited by the accreditation organization denied, suspended, withdrawn or revoked or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;

(ii) Notify HCFA within 10 days of a deficiency identified in an accredited laboratory where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

(iii) Notify HCFA of all newly accredited laboratories (or laboratories whose areas of specialty or subspecialty are revised) within 30 days;

(iv) Notify each laboratory accredited by the organization within 10 days of HCFA's withdrawal of recognition of the organization's deeming authority;

(v) Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections;

(vi) Provide HCFA, the State survey agency or other HCFA agent with any facility-specific data to include, but not be limited to, the following (upon request):

(A) PT results that constitute unsuccessful participation in an approved PT program; and

(B) Notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation;

(vii) Provide HCFA written notification at least 30 days in advance of the effective date of any proposed changes in its requirements; and

(viii) Disclose any laboratory's PT results upon the reasonable request by any person.

§ 493.507 Validation inspections of laboratories with certificates of accreditation.

(a) *Basis for inspection.* HCFA, the State survey agency, or a HCFA agent may conduct an inspection of an accredited laboratory that has been issued a certificate of accreditation. The results of these inspections will be used to validate the accreditation organization's accreditation process. These inspections may be conducted on a representative sample basis or in response to substantial allegations of noncompliance.

(1) When conducted on a representative sample basis, the inspection is comprehensive, addressing all condition level requirements, or may be focused on a specific condition level requirement or requirements, and the number of laboratories sampled is sufficient to allow a reasonable estimate of the performance of each accreditation organization.

(2) When conducted in response to a substantial allegation of noncompliance, HCFA, the State survey agency or other HCFA agent inspects for any condition level requirement or requirements that HCFA determines to be related to the allegation. If HCFA, the State survey agency or other HCFA agent substantiates a deficiency and determines that the laboratory is out of compliance with any condition level requirement, HCFA, the State survey agency or other HCFA agent will conduct a full CLIA inspection.

(b) *Effect of selection for inspection.* A laboratory selected for inspection must:

(1) Authorize its accreditation organization to release to HCFA, the State survey agency or other HCFA agent, on a confidential basis, a copy of the results of the laboratory's most recent full, and any subsequent partial, accreditation inspection(s);

(2) Authorize the validation inspection to take place;

(3) Provide HCFA, the State survey agency, or other HCFA agent access to all facilities, equipment, materials, records and information that HCFA determines have a bearing on whether the laboratory is being operated in accordance with the requirements of this part, and permit HCFA, the State survey agency or other HCFA agent to copy any such material or require it to be submitted; and

(4) Authorize HCFA, the State survey agency or other HCFA agent to monitor the correction of any deficiencies found through the validation inspection.

(c) *Refusal to cooperate with the inspection.* (1) If a laboratory selected for inspection fails to comply with the requirements specified in paragraph (b) of this section it—

(i) Will be subject to full review by HCFA, the State survey agency or other HCFA agent in accordance with this part; and

(ii) May be subject to suspension, revocation, or limitation of its certificate of accreditation under this part.

(2) An accredited laboratory will be once again deemed to meet the condition level requirements by virtue of its accreditation when—

(i) It withdraws any prior refusal to authorize its accreditation organization to release a copy of the laboratory's current accreditation inspection, PT results, or notification of any adverse actions resulting from PT failure;

(ii) It withdraws any prior refusal to allow a validation inspection; and

(iii) HCFA finds that the laboratory meets all the condition level requirements.

(d) *Consequences of a finding of noncompliance.* If a validation inspection results in a finding that the laboratory is out of compliance with one or more condition level requirements, the laboratory is subject to the same requirements and survey and enforcement processes applied to laboratories that are not accredited and that are found out of compliance following a State agency inspection under this part and to full review by

HCFA, the State survey agency or other HCFA agent in accordance with this part; i.e., the laboratory will be subject to the principal and alternative sanctions specified in § 493.1806 of this part.

(e) *Disclosure of accreditation and validation inspection results.* The accreditation inspection results are disclosable to the public only if they are related to an enforcement action taken by the Secretary. The results of all validation inspections conducted by HCFA, the State survey agency or other HCFA agents are disclosable.

(f) *Onsite observation of accreditation organization operations.* As part of the validation review process, HCFA may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and to assess the organization's compliance with its own policies and procedures. Such an onsite inspection may include, but is not limited to, the review of documents, the auditing of meetings concerning the accreditation process, the evaluation of accreditation inspection results or the accreditation decision-making process, and interviews with the organization's staff.

§ 493.509 Continuing Federal oversight of private, nonprofit accreditation organizations.

(a) *Comparability review.* In addition to reviewing the equivalency of specified accreditation requirements to the comparable condition level requirements when an accreditation organization initially applies to HCFA for "deeming authority", HCFA reviews the equivalency of requirements—

(1) When HCFA promulgates new condition level requirements;

(2) When HCFA identifies accreditation organizations whose requirements do not continue to be equal to or more stringent than condition level requirements;

(3) When an accreditation organization adopts new requirements;

(4) When an accreditation organization adopts changes to its inspection process as required by § 493.511(b); or

(5) Every six years or sooner if HCFA determines the organization requires an earlier review.

(b) *Validation review.* Following the end of a validation review period, HCFA evaluates the validation inspection results for each approved accreditation organization.

(c) *Reapplication procedures.* (1) Every six years, or sooner as determined by HCFA, an approved accreditation organization must reapply for continued approval of deeming authority. HCFA will notify the organization of the materials the organization must submit as part of the reapplication procedure.

(2) An accreditation organization that is not meeting the requirements of this subpart, as determined through a comparability or validation review, must furnish HCFA, upon request and at any time, with the reapplication materials HCFA requests. HCFA will establish a deadline by which the materials are to be submitted.

(d) *Notice.* HCFA provides written notice to the accreditation organization indicating that its approval may be in jeopardy if a comparability or validation review reveals that an accreditation organization is not meeting the requirements of this subpart and that a deeming authority review is being initiated. The notice contains the following information—

(1) A statement of the discrepancies that were found as well as other related documentation;

(2) An explanation of HCFA's review process on which the final determination will be based and a description of the possible actions as specified in § 493.511 that may be imposed by HCFA based on the findings from the comparability or validation review;

(3) A description of the procedures available if the accreditation organization desires an opportunity to explain or justify the findings made during the comparability or validation review; and

(4) The reapplication materials the organization must submit and the deadline for that submission.

§ 493.511 Removal of deeming authority and final determination review.

(a) *Deeming authority review.* (1) HCFA reviews, as appropriate, the criteria described in § 493.506 to reevaluate whether the accreditation organization continues to meet all these criteria. HCFA conducts a deeming authority review of an accreditation organization's program if the comparability or validation review produces findings as described at § 493.509(a) of this subpart.

(2) HCFA conducts, at its discretion, a deeming authority review of an accreditation organization's program if validation review findings, irrespective of the rate of disparity, indicate widespread or systematic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to CLIA requirements, taken as a whole.

(3) HCFA conducts a deeming authority review whenever validation inspection results over a one-year period indicate a rate of disparity of 20 percent or more between the findings of the accreditation organization and the findings of HCFA, State survey agencies, or other HCFA agents.

(b) Following the deeming authority review, if HCFA determines that the accreditation organization has failed to adopt requirements equal to or more stringent than CLIA requirements, HCFA may give the accreditation organization a conditional approval effective 30 days following the date of HCFA's determination of its deeming authority for a probationary period, not to exceed one year, to adopt comparable requirements.

(c) Following the deeming authority review, if HCFA determines that there are widespread systematic problems in the organization's inspection process, HCFA may give the accreditation organization conditional approval of its deeming authority during a probationary period not to exceed one year that is effective 30 days following the date of HCFA's determination.

(d) Within 60 days after the end of any probationary period, HCFA will make a final determination as to whether or not an accreditation organization continues to meet the criteria described at § 493.506 of this subpart and issues an appropriate notice (including reasons for the determination) to the accreditation organization. This determination is based on the evaluation of any of the following:

(1) The most recent validation inspection and review findings as described at § 493.509(b) of this subpart. In order for the accreditation organization to continue to have deeming authority, it must continue to meet the criteria in § 493.506 of this subpart;

(2) Facility-specific data and other related information;

(3) The accreditation organization's surveyors in terms of qualifications, ongoing education and training, composition of inspection team, etc.;

(4) The organization's inspection procedures; and

(5) The organization's accreditation requirements.

(e) HCFA may remove recognition of deeming authority effective 30 days from the date that it provides written notice to the accreditation organization that its deeming authority will be removed if the accreditation organization has not made improvements acceptable to HCFA during the probationary period.

(f) The existence of any validation review, deeming authority review, probationary status, or any other action by HCFA with respect to an accreditation organization does not affect or limit the conduct of any validation inspection of its accredited laboratories.

(g) HCFA will publish a notice in the **Federal Register** containing a justification of the basis for removing the deeming authority from an accreditation organization.

(h) After HCFA withdraws approval of an accreditation organization's deeming authority, the CLIA certificates of accreditation of all affected laboratories continue in effect for 60 days after the laboratory receives notification of the withdrawal of approval. HCFA may extend the period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for inspection to another approved accreditation organization or an application for a certificate or certificate of waiver to HCFA, the State agency or other HCFA agent before the initial 60 day period ends.

(i) If at any time HCFA determines that the continued approval of deeming authority of any accreditation organization poses an immediate jeopardy to the patients of the laboratories accredited by that organization, or such continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of deeming authority of that accreditation organization.

(j) Any accreditation organization that is dissatisfied with a determination to withdraw its deeming authority may request a reconsideration of that determination in accordance with subpart D of part 488.

§ 493.513 General requirements for CLIA-exempt laboratories.

(a) HCFA may exempt from CLIA program requirements, for a period not to exceed six years, all State-licensed or approved laboratories in a State if the State—

(1) Has in effect laws that provide for requirements equal to or more stringent than condition level requirements;

(2) Has an agency that licenses or approves laboratories that meet requirements equal to or more stringent than the CLIA condition level requirements specified in this part and would, therefore, meet condition level requirements if those laboratories had not been exempted from CLIA, but rather had been inspected for compliance with condition level requirements;

(3) Meets the requirements and is approved in accordance with § 493.515 of this subpart;

(4) Demonstrates that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements;

(5) Permits HCFA or HCFA agents to inspect laboratories in the State;

(6) Requires laboratories in the State to submit to inspections by HCFA or HCFA agents as a condition of licensure or approval;

(7) Agrees to pay the cost of the validation program administered by HCFA in that State as specified in §§ 493.645(b) and 493.646 of this part; and

(8) Takes appropriate enforcement action against laboratories found by HCFA or HCFA agents not to be in compliance with requirements equivalent to CLIA requirements.

(b) A laboratory in a State with an approved State laboratory program must—

(1) Authorize the laboratory program to release to HCFA or HCFA agent all records and information required by HCFA; and

(2) Permit inspection as required by these regulations.

(c) In applying to HCFA for exemption from the CLIA program, the State must provide the following information to HCFA—

(1) A detailed comparison of individual licensure or approval requirements with the comparable condition level requirements; i.e., a crosswalk;

(2) A detailed description of the inspection process including the frequency of inspections, copies of inspection forms, instructions and guidelines, a description of the review and decision-making process of licensure or approval inspections, whether inspections are announced or unannounced and a description of the steps taken to monitor the correction of deficiencies;

(3) A description of the State's enforcement authority, administrative structure and resources to enforce the State standards;

(4) A description of the process for monitoring proficiency testing (PT) performance, including action to be taken in response to unsuccessful participation in a HCFA-approved PT program;

(5) The State's procedures for responding to, and for the investigation of, complaints against licensed or approved laboratories;

(6) A list of all currently licensed or approved laboratories and the expiration date of each laboratory's current license or approval;

(7) Procedures under State confidentiality and disclosure requirements for the release of PT information, including explanatory information required to interpret PT results; and

(8) For Medicare and Medicaid payment purposes, a list of the specialties and subspecialties of tests performed by each laboratory.

(d) The State must also submit the following supporting documentation—

(1) A written presentation that demonstrates the agency's ability to furnish HCFA with electronic data in ASCII comparable code, including the crosswalk specified in paragraph (c)(1) of this section;

(2) A statement acknowledging that the State will notify HCFA through electronic data transmission of—

(i) Any laboratory that has had its licensure or approval revoked or withdrawn or has been in any way sanctioned by the State within 30 days of any such action taken;

(ii) Changes in licensure (or approval) or inspection requirements; and

(iii) Changes in the specialties or subspecialties under which any laboratory in the State performs testing.

(e) If HCFA determines that additional information is necessary to make a determination for approval or denial of the application for exemption, HCFA will notify the State and afford it an opportunity to provide the additional information.

(f) HCFA may visit the State laboratory program offices to review the application of the State's policies and procedures and other information provided by the State. Such review includes, but is not limited to, examination of documents and interviews with staff.

(g) HCFA will furnish the State a formal notice stating whether the request for exemption has been approved or denied and the rationale for any denial.

(h) Except as provided in paragraph (m) of this section, any State whose application for approval for exemption, or for renewal of that approval, from CLIA has been denied may resubmit its request as soon as the State has taken the necessary action to address the rationale for any previous denial.

(i) A State may withdraw its request for exempt status at any time prior to the official notification specified in paragraph (g) of this section.

(j) Any State whose application for approval for exempt status is denied may request, within 60 days of the notification of the denial, that its original application or application for renewal be reconsidered in accordance with part 488, subpart D of this chapter.

(k) HCFA publishes a notice in the Federal Register when it grants exemption to a State under paragraph (a) of this section. The notice—

(1) Names the State;

(2) Describes the basis for granting the exemption to the State;

(3) Describes how the laboratory requirements of the State are equal to or more stringent than those specified in this part; and

(4) Specifies a term of approval not to exceed six years.

(l) A State that has received approval for the exemption of its laboratories from the CLIA program must reapply to HCFA every two years for renewal of its exemption status and renew its agreement to pay the cost of the HCFA administered validation program in that State.

(m) If a State has requested a reconsideration of HCFA's determination that its request for exemption, or for renewal of its exemption, of its laboratories from CLIA is denied, it may not resubmit its request until a final reconsideration determination is issued.

§ 493.515 Federal review of laboratory requirements of State laboratory programs.

(a) HCFA's review of a State laboratory program includes, but is not necessarily limited to, an evaluation of the following:

(1) Whether the State's requirements for laboratories are equal to or more stringent than the condition level requirements;

(2) The State's inspection process requirements to determine—

(i) The comparability of the full inspection and complaint inspection procedures to those of HCFA, including but not limited to inspection frequency and the ability to investigate and respond to complaints against licensed or approved laboratories;

(ii) The State's enforcement procedures for laboratories found to be out of compliance with its requirements;

(iii) The ability of the State to provide HCFA with electronic data and reports in ASCII-comparable code with the adverse or corrective actions resulting from PT results that constitute unsuccessful participation in PT programs and with other data HCFA determines are necessary for validation and assessment of the State's inspection process requirements;

(3) The State's agreement with HCFA to—

(i) Notify HCFA within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or has been in any way sanctioned;

(ii) Notify HCFA within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

(iii) Notify each laboratory licensed by the State within 10 days of HCFA's withdrawal of the State's exemption;

(iv) Provide HCFA with written notification of any changes in its licensure (or approved) and inspection requirements;

(v) Disclose any laboratory's PT results in accordance with a State's confidentiality requirements;

(vi) Take the appropriate enforcement action against laboratories found by HCFA not to be in compliance with requirements comparable to condition level requirements and report such enforcement actions to HCFA;

(vii) Notify HCFA of all newly licensed laboratories, including the specialties and subspecialties, for which any laboratory performs testing within 30 days; and subspecialties, for which any laboratory performs testing within 30 days; and

(viii) Provide HCFA, as requested, inspection schedules for validation purposes.

§ 493.517 Validation inspections of CLIA-exempt laboratories.

(a) *Basis for inspection.* HCFA or a HCFA agent other than the State survey agency may conduct an inspection of any laboratory in a State with an approved laboratory program. The results of these inspections will be used to validate the appropriateness of the exemption of that State's licensed or approved laboratories from CLIA program requirements. These inspections may be conducted on a representative sample basis or in response to substantial allegations of noncompliance.

(1) When conducted on a representative sample basis, the inspection may be comprehensive, addressing all condition level requirements, or may be focused on a specific requirement or requirements. The number of laboratories sampled is sufficient to allow a reasonable estimate of the performance of the State.

(2) When conducted in response to a substantial allegation of noncompliance, HCFA or a HCFA agent inspects for any condition level requirement or requirements that HCFA determines to be related to the allegation. If HCFA substantiates a deficiency and determines that the laboratory is out of compliance with any condition level requirement, HCFA or other HCFA agent will conduct a full CLIA inspection.

(b) *Effect of selection for inspection.* A CLIA-exempt laboratory selected for a validation inspection must—

(1) Authorize the State to release to HCFA or a HCFA agent, on a confidential basis, a copy of the results of the laboratory's most recent full, and any subsequent partial, licensure or approval inspection(s);

(2) Authorize the validation inspection to take place; and

(3) Provide HCFA or a HCFA agent access to all facilities, equipment, materials, records and information that HCFA determines have a bearing on whether the laboratory is being operated in accordance with the requirements of this part and permit HCFA or a HCFA agent to copy any such materials or to require such copies to be submitted.

(c) *Refusal to cooperate with the inspection.* If a laboratory selected for a validation inspection fails to comply with the requirements specified in paragraph (b) of this section, HCFA will notify the State.

(d) *Consequences of a finding of noncompliance.* If a validation inspection results in a finding that the laboratory is out of compliance with one or more condition level requirements, HCFA will direct the State to take the appropriate enforcement action(s).

(e) *Disclosure of State and validation inspection results.* The disclosure of State inspection results will be the responsibility of the approved State laboratory program, in accordance with State law. The results of all validation inspections conducted by HCFA or other HCFA agents are disclosable.

(f) *Onsite observation of State laboratory program operations.* As part of the validation review process, HCFA may conduct an onsite inspection of a State's laboratory program offices and operations to verify the State's representations and to assess the State's compliance with its own policies and procedures, including verification of State enforcement actions taken on the basis of validation inspections performed by HCFA or HCFA agents. Such an onsite inspection may include, but is not limited to, the review of documents, auditing meetings concerning the licensure or approval process, the evaluation of State inspection results and the licensure or

approval decision-making process, and interviews with State employees.

§ 493.519 Continuing Federal oversight of an approved State laboratory program.

(a) *Comparability review.* In addition to reviewing the equivalency of specified licensure or approval requirements to the comparable condition level requirements when a State initially applies to HCFA for exemption of its licensed or approved laboratories from condition level requirements, HCFA reviews the equivalency of requirements when—

(1) HCFA promulgates new condition level requirements;

(2) HCFA identifies a State whose requirements do not continue to be equal to or more stringent than condition level requirements;

(3) A State laboratory program adopts new requirements;

(4) A State laboratory program adopts changes to its inspection process requirements as required by § 493.521(b); or

(5) Every six years or sooner if HCFA determines the State laboratory requires an earlier review.

(b) *Validation review.* Following the end of a validation review period, HCFA evaluates the validation inspection results for each approved State laboratory program.

(c) *Reapplication procedures.* (1) Every six years, or sooner as determined by HCFA, an approved State laboratory program must reapply for continued approval of CLIA exemption. HCFA will notify the State of the materials the State must submit as part of the reapplication procedure.

(2) A State that is not meeting the requirements of this subpart as determined through a comparability or validation review must furnish HCFA, upon request and at any time, with the reapplication materials HCFA requests. HCFA will establish a deadline by which the materials are to be submitted.

(d) *Notice.* HCFA provides written notice to the State, indicating that its CLIA exemption may be in jeopardy if a comparability or validation review reveals that it is not meeting the requirements of this subpart and that a review is being initiated of the CLIA exemption of the State's laboratories. The notice contains the following information—

(1) A statement of the discrepancies that were found, as well as other related documentation;

(2) An explanation of HCFA's review process on which the final determination will be based and a description of the possible actions as specified in § 493.521 that may be imposed by HCFA based on the findings from the validation or comparability review;

(3) A description of the procedures available if the State desires an opportunity to explain or justify the findings made during the comparability or validation review; and

(4) The reapplication materials the State laboratory program must submit and the deadline for the submission of those materials.

§ 493.521 Removal of CLIA exemption and final determination review.

(a)(1) HCFA conducts a review of a State's laboratory program if the comparability review produces findings as described at § 493.519(a), of this subpart. HCFA reviews, as appropriate, the criteria described in § 493.515 to reevaluate whether the laboratory program continues to meet all these criteria.

(2) HCFA conducts, at its discretion, an exemption review of an approved State laboratory program if validation review findings, irrespective of the rate of disparity, indicate widespread or systematic problems in the State's licensure or approval processes that provide evidence that the State's requirements, taken as a whole, are no longer equivalent to CLIA requirements, taken as a whole.

(3) HCFA conducts a review of an approved State laboratory program whenever validation inspection results over a two-year period indicate a rate of disparity of 20 percent or more between the findings of the State and the findings of HCFA or other HCFA agents.

(b) Following the review, if HCFA determines that the State has failed to adopt requirements equal to or more stringent than CLIA requirements, HCFA may give the State, within 30 days of its determination, a conditional approval of its exempt status for a probationary period not to exceed one year to afford the State the opportunity to adopt equal or more stringent requirements.

(c) Following the review, if HCFA determines that there are widespread or systematic problems in the State's inspection process, HCFA may give the State conditional approval of the exemption of its licensed or approved laboratories during a probationary period not to exceed one year that is effective 30 days. following the date of the determination;

(d) Within 60 days after the end of any probationary period, HCFA makes a final determination as to whether or not a State continues to meet the criteria described at § 493.515 of this subpart and issues an appropriate notice (including reasons for the determination) to the State. This determination is based on the evaluation of any of the following—

(1) The most recent validation inspection(s) and review findings. In order for the State to continue to be exempt, it must meet the criteria in § 493.519 of this subpart;

(2) Facility-specific data, as necessary, as well as other related information;

(3) Inspection procedures;

(4) Licensure or approval requirements.

(e) HCFA may remove its approval of a State laboratory program effective 30 days from the date that it provides written notice to the State of this proposed action if the State has not made improvements acceptable to HCFA during the probationary period.

(f) The existence of any validation review, probationary status, or any other action by HCFA does not affect or limit the conducting of any validation inspection.

(g) HCFA will cancel the approval of a State laboratory program if the State fails to pay the applicable fees as specified in §§ 493.645 and 493.646.

(h) If HCFA determines at any time that the continued approval of a State laboratory program poses an immediate jeopardy to the patients of the laboratories in that State, or such continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of that State laboratory program.

(i) HCFA will publish a notice in the **Federal Register** containing a justification of the basis for removing its approval of the State laboratory program.

(j) After HCFA withdraws approval of a State laboratory program, the exempt status of licensed or approved laboratories in the State continues in effect for 60 days after the laboratory receives notification from the State of the withdrawal of HCFA's approval of the program. HCFA may extend this period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for accreditation to an approved accreditation organization or an application to HCFA for a certificate or certificate of waiver before the initial 60 day period ends.

(k) HCFA may withdraw a State laboratory program's approval if the State refuses to take enforcement action against a laboratory in that State where HCFA determined it to be necessary. Laboratories that are in a State where

program approval has been removed are subject to the same requirements and survey and enforcement processes applied to laboratories that are not exempt from meeting CLIA requirements.

(l) Any State that is dissatisfied with a determination to remove the approval of its laboratory program may request a reconsideration of that determination in accordance with part 488, subpart D of this chapter.

C. Part 498 is amended as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh and 1395ii), unless otherwise noted.

2. Section 498.3 is amended by adding new paragraphs (d) (11) and (12) to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(d) *Administrative actions that are not initial determinations.*

* * * * *

(11) The determination that the accreditation requirements of a national accreditation organization do not provide (or do not continue to provide) reasonable assurance that the entities accredited by the accreditation organization meet the applicable long-term care requirements, conditions for coverage, conditions of certification, conditions of participation, or CLIA condition level requirements.

(12) The determination that requirements imposed on a State's laboratories under the laws of that State do not provide (or do not continue to provide) reasonable assurance that laboratories licensed or approved by the State meet applicable CLIA requirements.

Dated: April 4, 1992.

J. Michael Hudson,

Acting Administrator, Health Care Financing Administration.

Approved: April 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-17689 Filed 7-30-92; 8:45 am]

BILLING CODE 4201-01-M

federal register

Friday
July 31, 1992

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Years 1993 and 1994 for Rehabilitation Research and Training Centers; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Notice of Proposed Funding Priorities for Fiscal Years 1993 and 1994 for Rehabilitation Research and Training Centers

SUMMARY: The Secretary proposes funding priorities for several Rehabilitation Research and Training Centers (RRTC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Betty Jo Berland, U.S. Department of Education, 400 Maryland Avenue SW., room 3422, Switzer Building, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland. Telephone: (202) 732–1139. Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains five proposed priorities under the RRTC program. These priorities address vocational rehabilitation and long-term mental illness; aging with a disability; disability statistics; and personal assistance services; and independent living services for underserved populations. Earlier this year NIDRR published priorities for other RRTCs and other programs for fiscal years 1993–1994. Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are established to conduct coordinated and advanced programs of rehabilitation research on designated rehabilitation problem areas and to provide training to researchers, service providers, and consumers. Each Center must disseminate and encourage the use of new rehabilitation knowledge and publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

The statute requires that each Center conduct training for providers of rehabilitation services at various levels, which may include undergraduate, in-service, and postgraduate education. Each RRTC also must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. NIDRR encourages all Centers to involve individuals with disabilities and minorities in clinical and research training.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronting individuals with disabilities in order to achieve the goals specified in the priority. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in assuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications, and application materials are not available. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

PRIORITIES

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Vocational Rehabilitation and Long-Term Mental Illness

Background

Persons with long-term mental illness are one of the largest groups receiving services from State vocational rehabilitation agencies (Kraus and Stoddard, 1991). In recent years, studies have been conducted to identify the significant characteristics of persons with long-term mental illness, the characteristics of effective programs, and the environmental supports that contribute to successful vocational rehabilitation outcomes. While these studies have been helpful, the provision of vocational rehabilitation services to persons with long-term mental illness remains a significant issue (Jones, Levine, and Rosenberg, 1991). This is especially true for individuals "dually diagnosed" with substance abuse and long-term mental illness (Drake, Osher, and Wallach, 1991).

Priority

An RRTC on vocational rehabilitation and long-term mental illness shall—

- Determine the most effective vocational rehabilitation interventions for improving long-term employment outcomes;
- Provide training and technical assistance to vocational rehabilitation service providers to increase their use of research-based strategies and products to assist individuals with long-term mental illness to obtain employment in their chosen occupational fields;
- Develop, in coordination with related research supported by the Rehabilitation Services Administration, models to integrate vocational rehabilitation and other services for individuals with long-term mental illness;
- Develop models to provide appropriate vocational rehabilitation services during acute or crisis episodes of long-term mental illness; and

Identify workplace accommodations and the implementation strategies for those accommodations for individuals with long-term mental illness.

Proposed Priority 2—Aging with a Disability

Background

Many middle-aged and elderly individuals with disabilities are experiencing new physical, functional, psychological, and social support problems that are attributed to aging. Having benefitted from the strong emphasis on independent living in their earlier years, they live in their communities with expectations to continue independent and productive lives (Williams, 1987).

Individuals with disabilities often experience new impairments or functional losses as they age. For example, postpolio individuals can experience fatigue, weakness, and pain that compromises their ability to function; individuals with sensory impairments face decline in their other sensory systems, interfering with their compensations and adaptations for the original impairment; and individuals with long-term mental illness often find their acute episodes becoming more frequent, and accompanying dementias or other cognitive problems interfere with the ability to manage the original impairment.

A major challenge to the service system is to develop more capability to serve the growing numbers of persons who are "aging in" with long-standing disabilities. There is a shortage of well-trained personnel to work in the rehabilitation of older persons with disabilities and a paucity of research on effective rehabilitation techniques and applicable technology for this population.

The proposed Rehabilitation Research and Training Center would study services and outcomes for individuals aging with disabilities other than those who have spinal cord injuries or mental retardation. NIDRR is proposing separate priorities for RRTCs to address the needs of these populations.

Priority

An RRTC on aging with a disability shall—

- Develop models to predict, prevent, or treat complications of disability that are brought on by the aging process;
- Identify the prevalence of late onset complications in groups of people with an early onset physical disability;
- Develop models for the provision of home support and community services to prevent premature placement of disabled elderly individuals in domiciliary care;
- Identify, develop, and test service models that provide long-term care for elderly persons with disabilities in community environments;
- Develop models to serve minority individuals with disabilities as they age, capitalizing on informal and natural supports in the community that may be preferred sources of assistance; and
- Develop models to aid persons aging with disabilities to access rehabilitation services, independent living services, and appropriate technology to maintain employment and community living.

Proposed Priority 3—Disability Statistics

Background

There is need to improve the availability, degree of detail, and comparability of statistical data on disability. A number of Federal agencies, some States, and many private research institutions collect information, analyze some of it, and generate significant amounts of unanalyzed data. One of the major reasons for the current unsatisfactory state of statistical data on disability is the lack of a central resource for this information and an organized and comprehensive system for the collection, analysis, and synthesis of the data.

The major Federal agencies that routinely collect information on disability publish only a small fraction of statistical information derived from it and often publish at irregular intervals. Most agency data collections are driven by statutory requirements and are limited to program service statistics or data on individuals eligible for particular benefit programs.

At the same time there is a continuing demand from important users or potential users for (1) information on the incidence and prevalence of disability, and (2) distribution of this information to these users. Reliable information on service use, distribution of benefits, earnings, and costs of care is extremely valuable to individuals with disabilities and their organizations, planners, researchers, and policymakers.

Priority

An RRTC on disability statistics shall—

- Synthesize existing databases; conduct secondary analyses of critical and relevant data sets, including estimates of the incidence, prevalence, and distribution of various disabilities; and present these analyses in a series of detailed analytical reports;
- Identify major gaps in statistical information on the population of persons who are disabled, and make recommendations to the Department and other agencies as to how any major gaps that are identified can best be filled;
- Using existing data if feasible, develop more useful estimates of the number of individuals who are in congregate living settings such as halfway houses, group homes, adult foster care, and other intermediate living arrangements;
- Develop a database encompassing disability-related information on limitations in activities of daily living, patterns of service use, needs for

assistive devices, employment and earnings, benefits payments, insurance coverage, and demographic data;

• Serve as a repository and clearinghouse for statistical information on disability and as a resource center for researchers, consumers and consumer groups, planners, and policy makers; and

• Develop an equitable plan to further the objectives of the center by charging reasonable, cost-based fees for providing information to various categories of users in the RRTC's capacity as a clearinghouse and resource center.

Proposed Priority 4—Personal Assistance Services

Background

Personal assistance includes a wide range of services that have historically come under other rubrics, such as attendant care, home health services, home care, chore services, and homemaker services, as well as the services of readers and interpreters. For persons with severe disabilities, personal assistance means assistance with tasks aimed at maintaining health, personal appearance, comfort, safety, employment, and interactions within the community and society as a whole.

Personal assistance services (PAS) are often inaccessible to those most in need of them (Nosek, 1990). Because PAS require the full or part-time employment of workers, often at varying times and places at the convenience of the employers, PAS are expensive services that are often difficult to arrange logistically. Those individuals most in need of PAS are often unaware of the proper procedures to access services or are least able to pay for them. Recruitment and retention of competent, dependable personal assistants are also major problems because of low salaries, lack of health benefits, demanding work, relatively low status, lack of a career path, and deficits in the level and type of supervision provided by relatively inexperienced employers.

Priority

An RRTC on personal assistance services shall—

• Develop models for the delivery of effective PAS, including consumer-directed models;

• Develop models for the financing of PAS, with analyses of their cost and policy implications;

• Determine the cost-effectiveness of various models for providing PAS under various circumstances;

• Validate models for providing personal assistance at the worksite to increase employment among individuals with disabilities; and

• Develop a program of information dissemination and training to empower individuals with disabilities and inform those who provide services to them on the options for PAS.

Proposed Priority 5—Independent Living Services for Underserved Populations

Background

A 1992 Rehabilitation Services Administration report on the types of disabilities present among persons served by the IL Center programs showed that further efforts were necessary to enable Centers to serve persons with long-term mental illness (LTMI), those with cognitive or intellectual disabilities, individuals with head injuries, children with disabilities, the aging population with disabilities, persons who are members of minority ethnic groups, and persons with disabilities living in rural areas (Rehabilitation Services Administration, 1992).

The groups of persons listed in the preceding paragraph are underrepresented as consumers and managers of IL programs. The concept of IL is based on principles of peer management and direction, peer counseling, and advocacy. The concept was developed and implemented primarily by individuals whose disabilities did not affect significantly their capacities to execute the tasks required by the model. It is likely that individuals with mental illness or cognitive disabilities may need either an adapted model that enables them to achieve the same results or intensive training in the application of the existing model.

Existing IL programs may be either unfamiliar with the appropriate models or unable to modify their current models of participation. Similarly, the current outreach methodologies employed by IL programs are not effective with some groups of persons with disabilities due to barriers in language, culture, geography, or cognitive difficulty in understanding outreach materials.

Priority

An RRTC on independent living (IL) services for underserved populations shall—

• Assess the need for IL services and activities by individuals with LTMI and individuals with severe cognitive disabilities—particularly those from minority, rural, inner-city, homeless, aging, or youth populations;

• Develop models adapting the concepts and principles of IL—including self-direction, peer management, and self-representation—to individuals with LTMI and individuals with severe cognitive disabilities;

• Develop models to improve outreach to, and participation in IL programs by, individuals with LTMI and individuals with severe cognitive disabilities, particularly those from minority, rural, inner-city, homeless, aging, or youth populations;

• Develop strategies and provide training to enable IL programs and Centers to offer more effective services to individuals with LTMI and individuals with severe cognitive disabilities, particularly those from minority, rural, inner-city, homeless, aging, or youth populations;

• Develop models and provide training to enable individuals with LTMI and individuals with severe cognitive disabilities—particularly those from minority, rural, inner-city, homeless, aging, or youth populations—to increase their participation in the planning and administration of IL programs; and

• Evaluate the effectiveness of IL programs for the populations specified in this priority.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: May 14, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–18096 Filed 7–30–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
July 31, 1992

Part IV

Securities and Exchange Commission

17 CFR Parts 240 and 249

Adoption of Form Amendments, Broker-Dealer Registration and Reporting; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Release No. 34-30958

RIN 3235-AE49

Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form amendments.

SUMMARY: The Commission is adopting amendments to Form BD, the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934. The purpose of these amendments is to reduce the regulatory burden upon broker-dealers by eliminating reporting of certain minor self-regulatory organization rule violations, removing duplicative disclosure requirements, and by clarifying the instructions to the Form. The amendments also are designed to streamline the schedules to eliminate the requirement to disclose certain remote ownership interests in a broker-dealer and its control affiliates. In addition, the amendments update the disciplinary background provisions of the Form to reflect the 1990 amendments to the federal securities laws.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. D. Colby, Chief Counsel, or Belinda Blaine, Attorney, (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

I. Introduction

In Securities Exchange Act Release No. 29643 (September 6, 1991), 56 FR 44029 ("Release"), the Commission proposed several amendments to Form BD, the uniform registration form for broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act").[1] The proposed amendments were designed to reduce the costs associated with broker-dealer registration by clarifying certain reporting requirements and by limiting the scope of ownership disclosure required by the schedules to the Form.[2] The amendments also were intended to update the disciplinary history provisions of the Form to reflect the expanded authority of the Commission and the self-regulatory organizations ("SROs") under the 1990 amendments to the Exchange Act. In developing these amendments to Form BD, the Commission's staff consulted with the North American Securities Administrators Association, Inc.'s ("NASAA") Forms Revision Committee, the NASD, and representatives of the securities industry. The NASAA membership voted to adopt the proposed amendments to Form BD in October 1991.[3]

The Commission received six comment letters on the proposed Form revisions.[4] These comments expressed unanimous support for the amendments on the grounds that they will reduce the burden on broker-dealers without adversely affecting the quality of the information provided by Form BD. The ABA, for example, stated that the "proposed amendments include some very helpful and constructive changes." While all of the comments agreed with the proposed revisions, most of the comments also suggested additional technical changes, as discussed further below.[5]

II. Description of the Amendments

A. Item 7: Background Information

1. Minor Rule Violations

The principal changes to the body of Form BD relate to Item 7, which requires disclosure of information concerning the disciplinary history of broker-dealers and their control affiliates. Specifically, Question (E)(2) of Item 7 currently requires applicants to disclose whether an SRO or commodities exchange has ever found the applicant or a control affiliate to have been involved in *any* violation of its rules. In the Release, the Commission proposed to amend Question E(2) to exclude SRO rule violations designated as "minor" pursuant to a plan approved by the Commission under Rule 19d-1 of the Exchange Act.[6] A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine.[7] The Commission reasoned that eliminating this disclosure requirement would facilitate the SROs' enforcement of certain trading and reporting rules applicable to their members. The Commission also noted that disclosure of such violations on Form BD was not essential to the registration process because the Commission already receives this information on a quarterly basis from SROs that have filed a plan with the Commission.[8]

All of the comments that addressed the proposed amendment to Item 7(E)(2) believed that it was appropriate.[9] The ABA, for instance, stated that, "[i]n addition to the lack of relevance of such findings to a determination of the suitability of an applicant or registrant, and the availability of such information to regulators in any instance, the Commission is properly sensitive to the burdens imposed on registrants by such disclosure." The ABA further suggested that the amendments should be extended to allow broker-dealers to omit disclosure of contested SRO rule violations where the fine imposed by the SRO is minimal. The ABA argued that it would unfairly penalize broker-dealers

[1] See 17 CFR 240.15b1-1; 17 CFR 249.501. Form BD also may be used by broker-dealers to become a member of the National Association of Securities Dealers, Inc. ("NASD") and to register with all of the states, with the exception of New Jersey. In lieu of Form BD, New Jersey requires applicants to file for registration on Form SB-1. See 11C Pt. 2, H. Sowards & N. Hirsch, *Business Organizations—Blue Sky Regulation*, § 8.02 (1990).

Form BD was adopted in its current form in Securities Exchange Act Release No. 11424 (May 28, 1975), 40 FR 30634.

[2] As part of this ongoing effort to reduce the regulatory burden on broker-dealers, the Commission is preparing to join the Central Registration Depository ("CRD") system. See Securities Exchange Act Release No. 30959 (July 27, 1992) ("Release 34-30959").

[3] See NASAA Reports (CCH) ¶ 5,061 (October 24, 1991).

[4] American Bar Association, Subcommittee on Market Regulation of the Committee on Federal Regulation of Securities, Section of Business Law ("ABA"); Investment Company Institute ("ICI"); IDS Financial Services Inc.; Julius Baer Securities; National Regulatory Services, Inc. ("NRS"); and the New York Stock Exchange, Inc.

[5] The Release stated that the Commission was considering proposing similar amendments to Form ADV [17 CFR 249.0-1], the form for registration of investment advisers under the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)]. Several comments urged the Commission to adopt the same amendments to Form ADV in order to make Forms BD and ADV more uniform in appropriate respects. The Commission will take these comments into consideration in formulating amendments to Form ADV.

[6] 17 CFR 240.19d-1.

[7] These uncontested disciplinary infractions are not considered "final" for purposes of section 19(d)(1) of the Exchange Act (15 U.S.C. 78s(d)(1)). As a result, the SROs may report the infractions to the Commission on a periodic, as opposed to an immediate, basis.

[8] Moreover, the Commission has agreed to provide information regarding minor rule violations that are the subject of a plan approved by the Commission directly to requesting state regulatory authorities on a periodic basis.

[9] The Intermarket Surveillance Group ("ISG") also supported this amendment, and requested no-action relief from the staff of the Commission to permit members of ISG participant exchanges to immediately cease reporting such minor SRO rule violations on Form BD. No-action relief was granted pending adoption of the Form BD amendments in Intermarket Surveillance Group Participant Exchanges (May 13, 1992) [available on LEXIS].

who believe they have a valid defense to require them to disclose contested (but not uncontested) infractions of SRO rules.

The Commission has determined to adopt the revisions to Item 7(E)(2) as proposed. Thus, effective immediately, broker-dealers will no longer be required to disclose on Form BD any violation of an SRO rule that is designated as "minor" pursuant to an enforcement and reporting plan filed with, and approved by, the Commission pursuant to rule 19d–1 under the Exchange Act. To date, the Commission has approved the minor rule violation plans of the American, Boston, Cincinnati, New York, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange.[10] Question (E)(2) of Item 7, however, continues to require disclosure of all other SRO and commodities exchange rule violations. The Commission has determined not to adopt the ABA's suggestion at this time because it would be inconsistent with rule 19d–1(c)(2), which provides that an SRO rule violation is not considered minor if the sanctioned person seeks an adjudication or otherwise exhausts his or her administrative remedies with the SRO.

2. Foreign Sanctions and Administrative Orders

The proposed amendments also would have updated Item 7 to reflect recent amendments to the federal securities laws made by the International Securities Enforcement Cooperation Act of 1990 ("ISECA")[11] and the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act").[12] ICI, the only commenter to address these amendments, was generally supportive.[13]

The Commission therefore is expanding several questions in Item 7 to include a reference to foreign courts and regulatory authorities, and to Commission administrative and civil actions. For example, in addition to domestic felony convictions and certain misdemeanor convictions involving fraud and investment-related activities, Item 7(A) has been amended to require disclosure of similar convictions entered against the applicant or its control affiliate by a foreign court.[14] These amendments will enable the Commission and the SROs to obtain the information necessary to exercise their expanded authority under ISECA. In addition, as proposed, a new paragraph has been added to Question C of Item 7, which asks the applicant whether a Commission or Commodity Futures Trading Commission ("CFTC") action has ever resulted in the imposition of a civil monetary penalty on the applicant or a control affiliate, or whether the Commission or the CFTC has ever ordered the applicant or a control affiliate to cease and desist from any activity.[15]

As a result of the amendments to Item 7, registered broker-dealers will be required to determine whether they or any control affiliate (including individuals and firms) have been the subject of any finding of a foreign court or foreign financial regulatory authority, or a Commission or CFTC fine or cease and desist order. Any broker-dealer that determines that additional disclosure is required under revised Item 7 will need to file an amendment to Form BD on or promptly after November 16, 1992, the effective date of the Form amendments.[16]

B. Item 10: Types of Business Activities

The Commission also proposed to revise Item 10 of Form BD, which requires applicants for broker-dealer registration to check the appropriate boxes identifying the types of business that they are engaged in (or that they plan to engage in), excluding any business that accounts for less than ten percent of their total investment advisory or securities-related annual revenue. Under the proposed amendments, applicants would have been required to identify all of their investment-related business activities, regardless of the percentage of total revenue. The Commission specifically requested comment on whether Item 10 should continue to exclude activities that account for only a *de minimis* percentage of a broker-dealer's securities-related business.

In response, three comments argued that Item 10 should include a *de minimis* exception. According to ICI (commenting on the analogous item in Form ADV), disclosure of a business activity that constitutes only a nominal percentage of the applicant's total revenue is not relevant to the Commission in regulating the applicant's activities, nor is it relevant to potential clients of the applicant. The Commission agrees with these comments, and therefore has revised Item 10 to exclude activities that account for less than one

---

[10] See Securities Exchange Act Release Nos. 21918 (April 3, 1985), 50 FR 14068, 27543 (December 15, 1989), 54 FR 53223 (American Stock Exchange); Securities Exchange Act Release Nos. 26737 (April 17, 1989), 54 FR 16438–I, 29191 (May 14, 1991), 56 FR 23096 (Boston Stock Exchange); Securities Exchange Act Release No. 26053 (September 1, 1988), 53 FR 34851 (Cincinnati Stock Exchange); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (New York Stock Exchange); Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (Pacific Stock Exchange); Securities Exchange Act Release No. 23491 (August 1, 1986), 51 FR 28469 (Philadelphia Stock Exchange); and Securities Exchange Act Release No. 30369 (February 13, 1992), 57 FR 6148 (Chicago Board Options Exchange).

[11] Pub. L. No. 101–550, §§ 201–207, 104 Stat. 2713 (Nov. 15, 1990), codified at 15 U.S.C. 78*o*(b), 78c. ISECA amended the Exchange Act to give the Commission the explicit authority to bar, suspend, or restrict the activities of broker-dealers and persons associated or seeking to becoming associated with a broker-dealer, based upon the findings of a foreign court or foreign securities authority.

[12] Public Law No. 101–429, §§ 101–102, 201–205, 401–403, 104 Stat. 931 (Oct. 15, 1990), codified at 15 U.S.C. 77, 78u(d), 78u–2, 78*o*–4, 80b–3, and 80b–9. The Remedies Act gave the Commission the authority to seek civil monetary penalties in court proceedings and to impose monetary penalties and order disgorgement in administrative proceedings. The Remedies Act also provided the Commission with both temporary and permanent cease and desist authority to prevent violations of the securities laws.

For further discussion of ISECA and the Remedies Act, see Release, 56 FR at 44030.

[13] ICI, however, further suggested that disclosure of violations of investment-related statutes and regulations under Item 7 (and Item 11 of Form ADV) should be limited to violations that have occurred in the past ten years. ICI reasoned that this would be consistent with Item 7(A) of Form BD, which only requires applicants (and their control affiliates) to disclose felony and misdemeanor convictions that have occurred within ten years of the date of the application for registration. The Commission has not adopted this suggestion because it believes that information regarding all violations of investment-related statutes and regulations is necessary to determine whether an applicant is subject to statutory disqualification. Under Sections 3(a)(39) [15 U.S.C. 78c(a)(39)] and 15(b)(4) [15 U.S.C. 78*o*(b)(4)] of the Exchange Act, a person is subject to statutory disqualification if he or she has willfully violated, *inter alia*, the Exchange Act, the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the rules or regulations thereunder, regardless of the date of the violation.

[14] In addition, amended Item 7(D) now requests information regarding specific findings of a foreign financial regulatory authority. The definition of "foreign financial regulatory authority" in section 3(a)(51) of the Exchange Act has been reproduced, with minor modifications, in Item 7. Question F of Item 7 has been retained to ensure that applicants report any orders of a foreign government, court, regulatory agency, or exchange relating to investments or fraud, that have not been disclosed in response to other questions in Item 7.

[15] Although orders imposing monetary sanctions and cease and desist orders are not specifically included in the term "statutory disqualification" under section 3(a)(39) of the Exchange Act, the amendments to Item 7 require disclosure of this information for two reasons: (1) To ensure that Form BD provides a complete description of an applicant's disciplinary history; and (2) to make this information available to state regulatory authorities for use in the registration process.

[16] Amendments to Form BD must be filed pursuant to rule 15b3–1 (17 CFR 240.15b3–1) and in accordance with the instructions to the form. For further discussion of the new filing requirements, see part III, *infra*.

percent of the applicant's securities-related revenue. This *de minimis* exception will ensure that broker-dealers are not required to continually update their forms to report infrequent activities, such as an occasional trade for a customer in the securities of a non-profit corporation, that are not part of their regular business. The Commission emphasizes, however, that any activity, however insignificant, that triggers a specific Commission or SRO requirement nevertheless will continue to be required to be reported under Item 10. For instance, broker-dealers will need to report all activities involving municipal securities, government securities, and options.[17]

C. Amendments to the Schedules

1. Schedules A, B, and C

Schedules A, B, and C to Form BD require applicants to disclose the identity of their executive officers, directors, partners, and direct and indirect owners. Specifically, with respect to shareholders, Schedules A and B currently require disclosure of (1) all five percent owners and all intermediate owners of the broker-dealer, and (2) all five percent owners of the intermediate owners and each successive five percent owner of those owners until individual owners are listed, unless the intermediary is a public reporting company under section 12 or 15(d) of the Exchange Act.[18] Similar provisions apply to limited partners that have contributed five percent or more of a partnership's capital.

In many cases, the current disclosure requirements have made registration both costly and burdensome for broker-dealers. For example, in order to comply with these requirements, broker-dealers have had to investigate and provide information about five percent owners of distant affiliates, even when those persons were not reasonably in a position to control the management or policies of the broker-dealer. Moreover, the existing reporting requirements often have been an impediment to the registration of applicants with foreign ownership due to the difficulty in obtaining ownership information about remote foreign interests.[19]

To address these problems, the Commission proposed in the Release to narrow the scope of the disclosure required by the schedules to Form BD. Rather than reporting each successive five percent indirect owner of a direct owner, under the proposed amendments, broker-dealers would only have been required to disclose each successive twenty-five percent indirect owner of a direct owner. In addition, the Commission proposed to simplify the structure of the schedules to assist registration examiners in determining the chain of ownership of each applicant.

Julius Baer Securities strongly endorsed the amendments to the schedules, stating that, "[t]his change will be genuinely helpful to broker-dealers with foreign ownership because it will remove a significant impediment to the registration and the updating of their disclosure." The ABA also believed that the new schedules were a significant improvement, and particularly supported the requirement that twenty-five percent indirect owners be disclosed on Schedule B.[20] While the ABA approved of the amendments, it recommended that they be extended to limit the scope of disclosure of direct owners of a broker-dealer. The ABA argued that, in many cases, the requirement to disclose all five percent direct owners results in broker-dealers having to disclose extremely diluted ownership interests.

The Commission has determined at this time to adopt the amendments to Schedules A, B, and C as proposed. By adding certain persons currently not required to be disclosed, and by eliminating disclosure of persons whose ownership interests are so remote they effectively are not in a position to control the broker-dealer, the amendments will focus attention on those persons that are most likely to be in a position to affect the management or policies of the broker-dealer. Any persons having actual control that are not required to be disclosed on the schedules will continue to be disclosed in response to Item 6 of the Form.[21]

(a) *Schedule A: Directors, officers, and direct owners.* Under the revised schedules, applicants will report executive officers, directors, and five percent direct owners on Schedule A.[22] Direct owners are persons who own, beneficially own, have the right to vote, or the power to sell or direct the sale of, five percent or more of the voting securities of the broker-dealer. Broker-dealers that are public reporting companies under section 12 or 15(d) of the Exchange Act, however, will not be required to list their direct owners on Schedule A because these owners already are disclosed pursuant to the requirements of section 13 of the Exchange Act.[23] In the case of an applicant that is a partnership, all general partners and those limited partners that have the right to receive upon dissolution, or that have contributed, five percent or more of the partnership's capital, will be reported on Schedule A.

For purposes of Schedule A, persons will be deemed to beneficially own securities that they have the right to purchase, in sixty days or less, through the exercise of an option, warrant, or right to purchase the security.[24] Persons also will be deemed to own securities held by certain immediate family members with whom they share the same residence.[25] The ABA questioned

---

[17] *See, e.g.*, NASD Schedules to the By-Laws, Schedule C, Pt. II, § 2(f), NASD Manual (CCH) ¶ 1784. Under these rules, even if a broker-dealer plans to engage in only a *de minimis* business input and call options with the public, it must demonstrate that it has at least one registered options principal that has passed the appropriate NASD qualification examination.

Item 10 also has been amended to include additional categories of business activities. Questions E (broker-dealer selling corporate debt securities) and T.2. (broker-dealer selling tax shelters or limited partnerships in the secondary market) were suggested by the NASD, while Question X (broker-dealer selling interests in mortgages or other receivables) was suggested by the ABA.

[18] Ownership of a public reporting company under section 12 or 15(d) of the Exchange Act already is disclosed pursuant to section 13 of the Exchange Act (15 U.S.C. 781, 78*o*(d), 78m).

[19] In addition, unlike owners of domestic companies that are registered under section 12 or 15 of the Exchange Act, foreign owners of broker-dealers typically are not registered and therefore are unable to take advantage of the exception from disclosure provided for public reporting companies.

[20] In addition, the Commission staff spoke to counsel for several broker-dealers who expressed unanimous support for the proposed amendments to the schedules.

[21] Item 6 generally asks for information concerning any person not named in the schedules that directly or indirectly controls the management or policies of the applicant through an agreement or other means, or that finances the business of the applicant.

[22] All *indirect* owners will be reported on Schedule B, while amendments to Schedules A and B will be made on Schedule C. *See* discussion, *infra*.

[23] An applicant that is directly owned by a public reporting company, X, but that is not itself a reporting company, would disclose X on Schedule A, but would not disclose the owners of X (*i.e.*, the indirect owners of the applicant) on Schedule B. See discussion, *infra*.

[24] Assuming that it is exercisable within 60 days, the option or warrant would be disclosed at the time it is acquired, rather than at the time it is exercised. See, generally, Rule 13d–3(d)(1) under the Exchange Act [17 CFR 240.13d–3(d)(1)].

[25] For these purposes, family members include children, stepchildren, grandchildren, parents, stepparents, grandparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law.

The Commission historically has deemed a person to be the beneficial owner of securities held by immediate family members sharing the same residence on the grounds that the relationship between that person and his or her relative often results in the person obtaining benefits substantially equivalent to ownership. As the Commission stated

Continued

whether specific disclosure of family holdings was necessary in light of the disclosure required by Item 6 of Form BD.[26] The Commission believes that disclosure of this information on the schedules will provide securities regulators with a more comprehensive depiction of the ownership of the broker-dealer. Moreover, the requirement to attribute family holdings is designed to prevent the concealment of ownership interests through the assignment of actual ownership to family members.

(b) *Schedule B: Indirect Owners.* Applicants for registration will now be required to report *indirect* ownership on Schedule B. Specifically, they will disclose all twenty-five percent owners of a direct owner, their twenty-five percent owners, and each successive twenty-five percent owner of a twenty-five percent owner, continuing up the chain of ownership until a reporting company is reached. If there is no reporting company in the chain of ownership, disclosure will cease when the last twenty-five percent owner is listed. The attribution rules of Schedule A discussed above also apply to indirect owners reported on Schedule B. In the case of an owner that is a partnership, all general partners and those limited partners that have the right to receive upon dissolution, or that have contributed, twenty-five percent or more of the capital of the partnership, must be disclosed on Schedule B. For example, a broker-dealer that is fifty percent owned by a reporting company, X, forty percent owned by a non-reporting company, Y, and ten percent owned by a partnership, Z, would report X, Y, and Z on Schedul A. The broker-dealer would not have to report the owners of X on Schedule B because X is a reporting company. It would be required to disclose the twenty-five percent owners of Y on Schedule B, as well as their twenty-five percent owners, and so on, until a reporting company or the last twenty-five percent holder is disclosed. It also would disclose on Schedule B the general partners of Z and all limited partners entitled to twenty-five percent of the proceeds upon dissolution, as well as their twenty-five percent owners, continuing up the chain of ownership until a reporting company or the last twenty-five percent owner is listed.

The amendments to Schedule B are based on the assumption that only twenty-five percent indirect owners of five percent direct owners are in a position to influence the policies of the broker-dealer.[27] Thus, Schedule B does not require disclosure of any person who, for example, has effective control of the applicant through twenty-four percent ownership of each of two fifty percent owners. If the combination of the two twenty-four percent ownership interests allows such person to "cause the direction of management or policies" of the broker-dealer, his or her ownership would be required to be reported in response to Item 6 of Form BD.

(c) *Schedule C: Amendments to schedules A and B.* All amendments to Schedules A and B, including additions and deletions of names reported on the schedules, will now be made on a separate Schedule C. Schedules A and B will be filed only with the initial application for registration.

2.Other Schedules

In addition, as proposed, the Commission is adopting minor amendments to Schedules D and E, and adding a new Schedule DRP to Form BD. Under the revised schedules, details of answers to items in Form BD will continue to be provided on Schedule D, *except* for answers to Item 7 and the other schedules to the Form. Descriptions of events resulting in an affirmative answer to Item 7 of the Form will be provided on a new Schedule DRP. This schedule, which is essentially the same as the DRP page currently filed by registered representatives with the NASD as part of Form U–4, will be integrated into the CRD system. Broker-dealers that maintain a current Form BD or Form U–4 on the CRD therefore will not be required to complete an entire Schedule DRP, but will only fill out Item 1 and attach a copy of the DRP page previously filed with the CRD.[28] For each new event resulting in an affirmative answer to Item 7 of Form BD or an update of an event that previously has been reported, the registrant will be required to file a new Schedule DRP (as is now required for Schedule D). Finally, Schedule E will continue to require broker-dealers to disclose information regarding their branch offices, albeit in a more structured format.[29]

III. Filing Instructions

The amendments to Form BD become effective on November 16, 1992. Thus, all applicants filing for broker-dealer registration on or after that date will be required to file on the new revised Form BD.

In addition, broker-dealers that currently are registered with the Commission should review their Form BD filings to determine whether they contain all of the information required by amended Item 7 (disciplinary background information). To the extent that the revisions to Form BD result in an affirmative answer to a question in Item 7, registered broker-dealers will be required to file an amendment to their Form BD on November 16, 1992 (or as soon as possible after that date).[30] Broker-dealers that can answer "no" to all of the questions in amended Item 7 will *not* be required to file an amended Form BD at that time. Further, all registrants will be required to file a new revised Schedule A and Schedule B the next time they need to amend their ownership information.[31]

---

in Securities Exchange Act Release No. 26333 (December 2, 1988), 53 FR 49997, an attribution rule "focuses on family members in the same residence, who reasonably may be assumed to act in one degree or another as an economic unit, and who may benefit from each other's enrichment." See *also* Rule 16a–1(a)(2)(ii)(A) [17 CFR 240.16a–1(a)(2)(ii)(A)]; and Rule 16a–1(e) (defining "immediate family" for purposes of Section 16). Like Rule 16a–1, the Form BD attribution rule includes adoptive relationships.

[26] The ABA further questioned how securities beneficially owned by family members would be reported. Under the revised schedules, interests of family members would be disclosed separately, unless the family member in question exercises investment and/or voting power over the shares of the other member. In that case, the ownership interests would be aggregated. For example, if a father directly owned 4 percent of the applicant and an adult daughter sharing the same residence owned 2 percent, both would have to be named on Schedule A. If, however, the daughter was a minor child and the father exercised investment or voting power over the securities held in her name, the father would add the securities held by his daughter to his own holdings. The father thus would report 6 percent ownership of the applicant on Schedule A.

[27] The amendments also are consistent with the revised definition of "control" in the instructions to Form BD. Under this definition, persons who directly or indirectly have the right to vote, or the power to sell or direct the sale of, twenty-five percent or more of a class of voting securities are presumed to have control of the broker-dealer.

[28] Item 1 requests the name of the applicant or affiliate and certain other identifying information.

[29] Among other items, Schedule E requires disclosure of the location and name of the supervisor of each branch office, as well as any opening or closing of an office.

[30] The amendment would include page 1 (the execution page), page 3 or 4 (amended to show the new affirmative answers to questions in Item 7), and Schedule DRP (providing detailed information with respect to the affirmative answers to questions in Item 7).

[31] As discussed at note 2, *supra*, the Commission is preparing to join the CRD system. If the Commission's rule proposals relating to the CRD are adopted as proposed, broker-dealers that are not members of the NASD will be required to file a complete new Form BD (as amended) with the CRD over a fixed period of time. See Release 34–30959, discussing proposed amendments to the broker-dealer registration rules and filing instructions. This release also proposes several additional amendments to Form BD.

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [32] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that the amendments to Form BD will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. On the contrary, the amendments should mitigate some of the costs currently associated with broker-dealer registration.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act, [33] regarding the revisions to Form BD. A copy of the FRFA may be obtained from Belinda Blaine, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549; at (202) 504–2418.

[32] 15 U.S.C. 78w(a)(2).

[33] 5 U.S.C. 603.

List of Subjects in 17 CFR Part 249

Broker-Dealers, Reporting and recordkeeping requirements, Securities.

V. Statutory Basis

15 U.S.C. 78*o*, 78o–5, 78q, 78w.

For the reasons set out in the preamble, the Commission is amending title 17, chapter II, part 249 of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

2. By revising Form BD (17 CFR 249.501) to read as follows:

§ 249.501 Form BD, for application for registration as a broker and dealer or to amend or supplement such an application.

Note: Form BD does not appear in the Code of Federal Regulations. The revised Form BD is attached as Appendix 1 to this release.

Dated: July 27, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

Appendix 1

Form BD

Uniform Application for Broker-Dealer Registration

BILLING CODE 8010-01-M

INSTRUCTIONS FOR FORM BD

1. Updating -- By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed.

2. Contact Employee -- The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format

   - o Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Amendments to Schedules C, D and DRP also must be accompanied by an Execution Page (Page 1). Schedules A & B are amended by filing Schedule C.

   - o Type all information.

   - o Give the name of the broker-dealer and date on each page.

   - o Use only the Form BD and its Schedules or a reproduction of them.

4. Definitions

   - o Applicant -- The broker-dealer applying on or amending this form.

   - o Control -- The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

   - o Jurisdiction -- Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

   - o Person -- An individual, partnership, corporation or other organization.

   - o Self-regulatory organization -- Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. Schedules A, B and C -- File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B.

6. Schedule D -- Schedule D provides additional space for explaining "yes" answers to Form BD items (except for Item 7), but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule DRP -- All information relating to an event reportable under Item 7 must be provided on Schedule DRP. Applicant may submit a partially completed Schedule DRP (as specified in the Schedule) only if the applicant or control affiliate for whom the Schedule is being filed has submitted a fully-completed Schedule DRP (in connection with another Form BD filing) or a DRP Page (in connection with a Form U-4 filing) relating to the occurrence of the same event to the Central Registration Depository (CRD) system of the NASD. In such cases this fully-completed Schedule DRP or DRP Page must be attached to the applicant's Schedule DRP.

8. Schedule E -- Schedule E amendments reporting changes in Branch Offices may be submitted without an execution page.

9. Government Securities Activities

   A. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

   B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

   C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

10. Federal Information Law and Requirements -- The Exchange Act, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

FORM BD Page 1	Applicant:		CRD No.:	DATE MM/DD/YY

Uniform Application for Broker-Dealer Registration

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ Application ☐ Amendment

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:

A. Full name of applicant (if sole proprietor, state last, first and middle name):

_____

B. IRS Empl. Ident. No.:

_____

C. Name under which broker-dealer business primarily is conducted, if different:

_____

List on Schedule D any other name by which the firm conducts business.

D. If this filing makes a name change on behalf of the applicant, enter the previous name and specify whether the name change is of the applicant name (1A) or business name (1C):

_____ ☐ (1A) ☐ (1C)

E. Firm main address: (Do Not Use A P.O. Box)

_____ (Number and street) _____ (City) _____ (State) _____ (Zip Code - All Nine Digits)

F. Mailing address, if different:

_____

G. Business Telephone Number:

_____ (Area Code) _____ (Telephone Number)

H. Contact Employee:

_____ (Name and Title) _____ (Area Code) _____ (Telephone No.)

EXECUTION

For the purpose of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and applicant hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the applicant in said State(s) upon whom may be served any notice, process, or pleading in any action or proceeding against the applicant arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the applicant hereby consents that any such action or proceeding against the applicant may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if applicant were a resident in said State(s) and had lawfully been served with process in said State(s).

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1.E. and 1.F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____
Date Name of Applicant

By: _____ _____
Signature and Title Print Name

Subscribed and sworn before me this _____ day of _____, _____ by _____
year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization. To amend, circle items being amended. Affix notary stamp or seal where applicable.

FORM BD
Page 2

Applicant:		CRD No.:	DATE MM/DD/YY

2. Indicate in the boxes below each jurisdiction in which the applicant is registered or wishes to register as a broker-dealer. If any registration, license, or membership listed is of a restricted nature, explain fully on Schedule D.

____ Securities and Exchange Commission

SRO: ASE ☐ BSE ☐ CBOE ☐ CSE ☐ MSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ Other (Specify)____

JURISDICTION

AL ☐ AK ☐ AZ ☐ AR ☐ CA ☐ CO ☐ CT ☐ DE ☐ DC ☐ FL ☐ GA ☐ HI ☐ ID ☐
IL ☐ IN ☐ IA ☐ KS ☐ KY ☐ LA ☐ ME ☐ MD ☐ MA ☐ MI ☐ MN ☐ MS ☐ MO ☐
MT ☐ NE ☐ NV ☐ NH ☐ NJ ☐ NM ☐ NY ☐ NC ☐ ND ☐ OH ☐ OK ☐ OR ☐ PA ☐
RI ☐ SC ☐ SD ☐ TN ☐ TX ☐ UT ☐ VT ☐ VA ☐ WA ☐ WV ☐ WI ☐ WY ☐ PR ☐

3. Indicate date and place applicant obtained its legal status (i.e., place of incorporation, where partnership agreement was filed, or where applicant entity was formed):

Date of formation _____ (MM/DD/YY). Place of formation _____ of:

CORPORATION ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER ☐ Specify_____

Applicant's fiscal year ends _____ (MM/DD).

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these Schedules must be provided on Schedule C.

4. If applicant is a sole proprietor, state full residence address and Social Security Number.

Social Security No:_____

_____ (Number and street) _____ (City) _____ (State) _____ (Zip Code - All Nine Digits)

5. Is applicant at the time of this filing succeeding to the business of a currently registered broker-dealer? (Do not report previous successions already reported on Form BD)..... Yes ☐ No ☐

If "yes," answer the questions below and describe the details of the succession on Schedule D.

A. Date of Succession: _____

B. Name of Predecessor: _____

IRS Empl. Ident. No.:_____ Firm CRD No. (if any):_____ SEC File Number: 8-_____

6. Does any person not named in Item 1 or Schedules A, B, or C, directly or indirectly:

A. Control the management or policies of applicant through agreement or otherwise? See instructions for Definition of Control. (If yes, state on Schedule D the exact name of each person and describe the basis for the person's control.)..... Yes ☐ No ☐

B. Wholly or partially finance the business of applicant in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933; (2) credit extended in the ordinary course of business by suppliers, banks and others; or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1)? (If "yes," state on Schedule D the exact name of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD Page 3	Applicant:		CRD No.:	DATE MM/DD/YY

7. Background Information

Use Schedule DRP for providing details to "yes" answers to the questions in Item 7.

Definitions:

- Control affiliate - A person named in Items 1.A., 6. or in either Schedules A, B or C as control persons or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.
- Investment or investment-related - Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- Involved - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.
- Foreign financial regulatory authority - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a membership organization, a function of which is to regulate the participation of its members in the activities listed above.

	Yes	No
A. In the past ten years has the applicant or a control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic or foreign court to:		
(1) a felony or misdemeanor involving: o investment or an investment-related business o fraud, false statements, or omissions o wrongful taking of property, or o bribery, forgery, counterfeiting or extortion?	☐	☐
(2) any other felony?	☐	☐
B. Has any domestic or foreign court:		
(1) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity?	☐	☐
(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?	☐	☐
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) found the applicant or a control affiliate to have made a false statement or omission?	☐	☐
(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes?	☐	☐
(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities?	☐	☐
(5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity?	☐	☐
D. Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:		
(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes?	☐	☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD
Page 4

Applicant:		CRD No.:	DATE MM/DD/YY

(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ☐ Yes ☐ No

(4) in the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity? ☐ Yes ☐ No

(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? ☐ Yes ☐ No

(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant? ☐ Yes ☐ No

E. Has any self-regulatory organization or commodities exchange ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? ☐ Yes ☐ No

(2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission)? ☐ Yes ☐ No

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ☐ Yes ☐ No

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? ☐ Yes ☐ No

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud other than as reported in Items 7.A., B., or D.? ☐ Yes ☐ No

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? ☐ Yes ☐ No

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? ☐ Yes ☐ No

I. Does the applicant have any unsatisfied judgments or liens against it? ☐ Yes ☐ No

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? ☐ Yes ☐ No

8. Does applicant:

A. Have any arrangement with any other person, firm or organization under which:

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? ☐ Yes ☐ No

(2) The funds or securities of applicant or of any of its customers are held or maintained by such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR 240.15c3-3)? ☐ Yes ☐ No

B. Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? ☐ Yes ☐ No

If the answer to any subsection of Item 8 is "yes," furnish full details on Schedule D as to each such arrangement, including the full name and principal business address of the other person, firm, or organization, and a summary of each such arrangement. Clearly label the subsection of Item 8 to which the details of each arrangement are provided.

9. Directly or indirectly, does applicant control, is applicant controlled by, or is applicant under common control with any partnership, corporation, or other organization engaged in the securities or investment advisory business? ☐ Yes ☐ No

If the answer to Item 9 is "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. If any of the control affiliates are registered through the CRD system, indicate the Firm CRD number to aid in identification. See instructions for Definition of Control.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD
Page 5

Applicant:		CRD No.:	DATE MM/DD/YY

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A.	Exchange member engaged in exchange Commission business other than floor activities	☐ EMC
B.	Exchange member engaged in floor activities	☐ EMF
C.	Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D.	Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E.	Broker or dealer selling corporate debt securities	☐ [ ]
F.	Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G.	Mutual fund underwriter or sponsor	☐ MFU
H.	Mutual fund retailer	☐ MFR
I.	1. U.S. government securities dealer	☐ GSD
	2. U.S. government securities broker	☐ GSB
J.	Municipal securities dealer	☐ MSD
K.	Municipal securities broker	☐ MSB
L.	Broker or dealer selling variable life insurance or annuities	☐ VLA
M.	Solicitor of time deposits in a financial institution	☐ SSL
N.	Real estate syndicator	☐ RES
O.	Broker or dealer selling oil and gas interests	☐ OGI
P.	Put and call broker or dealer or option writer	☐ PCB
Q.	Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐ BIA
R.	Broker or dealer selling securities of non-profit organizations (e.g. churches, hospitals)	☐ NPB
S.	Investment advisory services	☐ IAD
T.	1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
	2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ [ ]
U.	Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V.	Trading securities for own account	☐ TRA
W.	Private placements of securities	☐ PLA
X.	Broker or dealer selling interests in mortgages or other receivables	☐ [ ]
Y.	Other (give details on Schedule D)	☐ OTH

		Yes	No
11. A.	Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or dealer for its own account?	☐	☐
B.	Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)	☐	☐
12.	Is applicant applying for or continuing an existing solely registration as a government securities broker or dealer pursuant to Section 15C of the Securities Exchange Act of 1934?	☐	☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD Page 6	Applicant:		CRD No.:	DATE MM/DD/YY

13. Notice of Government Securities Activities

A. Is applicant registered (or registering) as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer in addition to other broker-dealer activities?..... Yes ☐ No ☐

(Do not answer "yes" if applicant answered "yes" to Question 12.)

B. Is applicant ceasing its activities as a government securities broker or dealer?..... Yes ☐ No ☐

(Do not answer "yes" unless previously answered "yes" to Question 13A.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule A of FORM BD Direct Owners and Executive Officers

Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 3)

1. Use Schedule A only in new applications to provide information on the direct owners and executive officers of the applicant. Use Schedule B in new applications to provide information on indirect owners. File all amendments on Schedule C. Complete each column.

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individual with similar status or functions;

   (b) in the case of an applicant that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the applicant, unless the applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) in the case of an applicant that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) in the case of an owner that is a trust, the trust and each trustee.

3. Complete the "Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

4. (a) In the "Control Person" column, enter "yes" if person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons."

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

5. Ownership codes are: NA - less than 5% A - 5% but less than 10% B - 10% but less than 25% C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule B of FORM BD Indirect Owners	Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 3)

1. Use Schedule B only in new applications to provide information on the indirect owners of the applicant. Use Schedule A in new applications to provide information on direct owners. File all amendments on Schedule C. Complete each column.

2. With respect to each owner listed on Schedule A, (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purpose of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (b) in the case of an owner that is a partnership, all its general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and

   (c) in the case of an owner that is a trust, each trustee.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. Complete the "Status" column by entering status as partner, trustee, shareholder, etc, and if shareholder, class of securities owned (if more than one).

5. (a) In the "Control Person" column, enter "yes" if the person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control.

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Entity in Which Interest is Owned	Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID	Official Use Only

Schedule C of FORM BD Amendments to Schedules A & B	Applicant:		CRD No.:	DATE MM/DD/YY

(Amendments to answers for Form BD Item 3)

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the "Type of Amd." column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same person).

3. Ownership Codes are: NA - less than 5% A - 5% but less than 10% B - 10% but less than 25% C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

4. List below all changes to Schedule A:

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Type of Amd.	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

5. List below all changes to Schedule B:

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Type of Amd.	Entity in Which Interest is Owned	Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule D of FORM BD Continuation Sheet	Applicant:		CRD No.:	DATE MM/DD/YY

INSTRUCTIONS

- Use this Schedule D to report details of answers to Form BD Items except Item 7 and the other Schedules.
- File with a completed Execution Page (Page 1).
- Use this Schedule D only to report new information or changes/updates to previously submitted details. Do not repeat previously submitted information.
- Provide complete and concise information.

Item of Form	Answer

Schedule DRP of FORM BD Page 1	Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 7)

INSTRUCTIONS

- This Schedule DRP must be filed upon occurrence of an event reportable under Item 7 of Form BD.
- Use a separate schedule for each event or proceeding. An event or proceeding may be reported for more than one person or entity using one Schedule DRP. File with a completed Execution Page (Page 1).
- One event may result in more than one "yes" answer in Item 7; if so, use only one schedule to report all information relating to the single event.
- Provide clear and concise answers for each item on this schedule.
- It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this schedule.

1. A. The person(s) or entity(ies) for whom this Schedule DRP is being filed is (are): (check only one box)

☐ The Applicant ☐ One or more control affiliates ☐ Applicant and one or more control affiliates

If this Schedule DRP is being filed for a control affiliate, give the full name of the control affiliate below (for individuals, Last name, First name, Middle name). If the control affiliate is registered with the CRD, provide the CRD number. If not, indicate "non-registered" in the space for the CRD Number.

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

B. If the control affiliate is registered through the CRD, has the control affiliate submitted a DRP (with Form U-4) or Schedule DRP to the CRD system for the event?..... Yes ☐ No ☐

If answer is no, then complete Items 2-9 below. If the answer is yes, no other information on this schedule must be provided, but a copy of the DRP or Schedule DRP submission must be attached.

NOTE: The completion of this form does not relieve the control affiliate of its obligation to update its CRD records.

2. This Schedule DRP relates to the following questions in Item 7.

7A(1) ☐	7C(3) ☐	7D(4) ☐	7E(4) ☐
7A(2) ☐	7C(4) ☐	7D(5) ☐	7F ☐
7B(1) ☐	7C(5) ☐	7D(6) ☐	7G ☐
7B(2) ☐	7D(1) ☐	7E(1) ☐	7H ☐
7C(1) ☐	7D(2) ☐	7E(2) ☐	7I ☐
7C(2) ☐	7D(3) ☐	7E(3) ☐	7J ☐

3. Is this schedule being filed to change or update any information regarding a previously reported event or proceeding?..... Yes ☐ No ☐

4. Who initiated this event or proceeding? (Enter name of firm, regulator, customer, etc.)

_____

5. What type of event or proceeding was this? (i.e., Civil, Administrative, Criminal, Arbitration)

_____

Schedule DRP of FORM BD Page 2	Applicant:		CRD No.:	DATE MM/DD/YY

6. On what date was the event or proceeding initiated?

_____

7. Identify the docket or case number of the event or proceeding (if any).

_____

8. What were the allegations against the applicant and/or control affiliate? (Include amounts of actual or alleged damages or claims, the type of product involved, and the name of the broker-dealer, if different from the current applicant.)

_____

_____

_____

_____

9. A. What is the current status of the event or proceeding? _____

B. On what date was this status reached? _____

C. What was the result? (Include felony/misdemeanor, a description of the penalties, amount of fine, payment or settlement; terms of the disposition, length of suspension or restriction, etc.)

_____

_____

_____

_____

_____

_____

10. You may provide a brief summary of this event or proceeding (Optional). (Your information must fit within the space provided.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Schedule E of FORM BD	Applicant:		CRD No.:	DATE MM/DD/YY

Use this schedule to open (ADD) or close (DELETE) business locations of applicant, and to update (CHANGE) information relating to existing applicant business locations other than the main office.

Instructions for Items 1-7. Complete Item 1-7 for each entry except where noted.

Item 1. Applicant must check one box only. For initial filings all business locations would be checked **ADD**. Failure to check this item will result in an incomplete filing and a delay in processing.

Item 2. Complete for all entries. The address must be the physical location. **Post Office box only designations are not sufficient and cannot be processed.**

Item 3. Complete for all entries. Give Supervisor name (last, first, middle) as it appears on most recent Form U-4 filing.

Item 4. Complete ONLY when applicant changes the address for an existing business location.

Item 5. Complete for all entries (if available).

Item 6. Complete for all entries. Will represent opening, closing, or effective date of change for that business location. Schedule E form date will be substituted for the effective date if Item 6 is incomplete or missing.

Item 7. Complete for all entries. Check YES or NO to denote whether location will be an Office of Supervisory Jurisdiction (OSJ) as defined in the NASD Rules of Fair Practice, Article III Section 27.

Item 8. Complete branch i.d. or billing code for all entries.

Repeat Items 1-8 for each business location submitted on this filing.

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N___

8. I.D. or Code
____

3. ____________________
Supervisor - Last, First, Middle Name

5. ________________
CRD Number of Supervisor

6. ____/____/____
Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N___

8. I.D. or Code
____

3. ____________________
Supervisor - Last, First, Middle Name

5. ________________
CRD Number of Supervisor

6. ____/____/____
Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N___

8. I.D. or Code
____

3. ____________________
Supervisor - Last, First, Middle Name

5. ________________
CRD Number of Supervisor

6. ____/____/____
Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ____________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N___

8. I.D. or Code
____

3. ____________________
Supervisor - Last, First, Middle Name

5. ________________
CRD Number of Supervisor

6. ____/____/____
Effective date (mm/dd/yr)

[FR Doc. 92-18169 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-30959; File No. S7-25-92]

RIN 3235-AE54

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: In connection with its plan to coordinate the broker-dealer registration process with the Central Registration Depository, the Securities and Exchange Commission is publishing for comment several amendments to its broker-dealer registration rules. The proposed amendments would provide new instructions for filing Form BD, the uniform application form for broker-dealer registration, amendments to Form BD, and Form BDW, the uniform request form for broker-dealer withdrawal, with the Central Registration Depository. The amendments also would eliminate the requirement that applicants for broker-dealer registration file a statement of financial condition and representations regarding capital contributions, facilities, and financing, as part of their applications on Form BD. In addition, the Commission is proposing clarifying amendments to Form BD and the broker-dealer successor rules. Finally, the Commission is proposing an amendment to Schedule I of Form X-17A-5 (the FOCUS report) to require registered broker-dealers to disclose their affiliations, if any, with U.S. banks.

DATES: Comments should be received on or before August 31, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-25-92. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Belinda A. Blaine, Attorney, at (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In order to facilitate the broker-dealer registration process, the Securities and Exchange Commission ("Commission") is preparing to participate in the Central Registration Depository ("CRD"). The CRD is a computerized filing and data processing system operated by the National Association of Securities Dealers, Inc. ("NASD") that maintains registration information regarding NASD member firms and their registered personnel for access by state regulators, certain self-regulatory organizations ("SROs"), and the Commission.[1] The Commission's primary objective in joining the CRD system is to provide "one stop filing" for broker-dealers. Currently, applicants for broker-dealer registration that also are applying for membership in the NASD are required to file separate applications on Form BD, the uniform form for broker-dealer registration, with both the Commission and the NASD. Under the new system, broker-dealers will be able to file one application for registration on Form BD with the NASD, which will enter the information into the CRD system and then electronically forward the data to the Commission for review. Form BD amendments and withdrawals from registration on Form BDW also will be filed through the CRD.

The Commission believes that its direct participation in the CRD system will improve the efficiency of the registration process by creating a comprehensive, centralized database for all registrants, and by giving the Commission more immediate access to current data in filings made by broker-dealers. The new system also will result in significant cost savings to registrants, who will no longer be required to make multiple filings with the Commission, the NASD, and state agencies.

To prepare for its entry into the CRD system, the Commission is proposing several amendments to its broker-dealer registration rules and filing instructions, as well as certain clarifying amendments to Form BD. The Commission also is taking this opportunity to propose a revision to Schedule I to Form X-17A-5 (the FOCUS report), filed by broker-dealers with the Commission pursuant to rules 17a-5 and 17a-10 under the Securities Exchange Act of 1934 ("Exchange Act").[2]

[1] The CRD also contains information regarding the payment of filing fees and enforcement actions taken against broker-dealers and their registered personnel by the Commission, the SROs, the Commodity Futures Trading Commission, and state securities regulators.

[2] 17 CFR 240.17a-5, 240.17a-10.

II. Filing Procedures

The Commission plans to process broker-dealer filings through the CRD system in two phases. Under the first phase, all broker-dealers applying for registration with the Commission on or after November 16, 1992,[3] would file an executed original Form BD with the CRD.[4] Registered broker-dealers that are members of the NASD would *not* be required to file a new Form BD at that time because the CRD system already contains Form BD information on NASD members. However, any registered NASD member amending its Form BD filing on or after November 16, 1992, would need to file the amended pages, together with the execution page, with the CRD in accordance with the instructions to Form BD.[5]

The second phase of the plan involves only registered non-NASD member broker-dealers, whose filings would be processed through the CRD system over a period of seven months. These broker-dealers would be required to file a complete Form BD with the CRD during the week of:

(1) January 11, 1993, in the case of all non-NASD member broker-dealers whose SEC registration numbers are between 8-1656 and 8-26116;

(2) February 1, 1993, for all such broker-dealers whose SEC registration numbers are between 8-26158 and 8-33987;

(3) May 3, 1993, for all such broker-dealers whose SEC registration numbers are between 8-34006 and 8-38760;

(4) June 1, 1993, for all such broker-dealers whose SEC registration numbers are between 8-38763 and 8-41501;

(5) July 5, 1993, for all such broker-dealers whose SEC registration numbers are between 8-41505 and 8-43006;

(6) August 2, 1993, for all such broker-dealers whose SEC registration numbers are between 8-43009 and 8-43792; and

[3] All dates referred to in this release are approximate and subject to change.

[4] Consents to service of process filed by foreign broker-dealers on Forms 7-M, 8-M, 9-M, and 10-M pursuant to Rule 15b1-5 [17 CFR 240.15b1-5] and Rule 15Ca2-5 [17 CFR 240.15Ca2-5] would continue to be filed directly with the Commission, but a copy would be sent to the CRD with Form BD.

[5] In conjunction with this release, the Commission is publishing a release adopting several amendments to Form BD. See Securities Exchange Act Release No. 30956 (July 27, 1992). These amendments become effective on November 16, 1992. Accordingly, any broker-dealer applying for registration or amending its registration form through the CRD system would be required to use the current, revised version of Form BD. For example, to report an affirmative answer to a question in Item 7, a registered broker-dealer would need to file a new Schedule DRP (describing the event reportable under Item 7) in addition to the amended pages and page 1 of the form.

(7) September 6, 1993, for all such broker-dealers whose SEC registration numbers are 8–43794 and above.

Any subsequent amendments to these Form BD filings also would be filed with the CRD. Registered non-NASD member broker-dealers that need to amend their Form BD subsequent to November 16, 1992, but prior to their scheduled processing date, would promptly file a complete amended Form BD with the CRD.[6]

In addition, as of November 16, 1992, NASD member broker-dealers requesting withdrawal from registration would file one manually signed original Form BDW, the uniform request form for broker-dealer withdrawal, and a copy of the required sections of part II (or part IIA for non-clearing firms) of their FOCUS reports with the CRD.[7] Non-NASD member broker-dealers that have not previously filed a Form BD with the CRD would begin filing for withdrawal from registration with the CRD on September 30, 1993.[8] Non-NASD members, however, would continue to send a copy of Form BDW, together with the required attachments,[9] directly to the Commission's Office of Filings, Information, and Consumer Services.

The Commission is proposing to amend Rules 15b1–1, 15b3–1, and 15b6–1[10] and to revise the special instructions for completing or amending Form BD[11] to incorporate the new instructions for filing registration materials through the CRD system, as described above. All applications, amendments, and withdrawals from registration filed with the CRD would be deemed to be filed with the Commission.[12] The General Instructions to Form BDW also would be revised to amend all references with respect to filing with the Commission.

III. Statement of Financial Condition and Representations

To facilitate broker-dealer registration through the CRD system, the Commission also is proposing to rescind rule 15b1–2 and related rules 15Ba2–2(b) and 15Ca2–2, all under the Exchange Act.[13] Rule 15b1–2 requires an applicant for broker-dealer registration to submit a statement of financial condition and other information regarding its financial resources as part of its application on Form BD. Specifically, the rule requires the applicant to provide: (i) Information regarding its assets, liabilities, and net worth; (ii) a schedule listing its securities and, if readily marketable, their market value; (iii) a computation of aggregate indebtedness and net capital in compliance with Rule 15c3–1[14] under the Exchange Act (or the relevant rule of the national securities exchange of which the applicant is or will be a member); (iv) a statement describing the nature and source of capital, and representing that such capital has been and will continue to be contributed to the business; (v) a representation that adequate arrangements have been made for the establishment and maintenance of facilities, financing, and certain other aspects of its business; and (vi) a statement describing the arrangements made for obtaining the funds necessary to operate the business in the ensuing year, setting forth the anticipated expenses for that year, and providing information regarding arrangements made to obtain additional financing should it become necessary. Rules 15Ba2–2(b) and 15Ca2–2 contain similar disclosure requirements for non-bank municipal securities dealers whose business is exclusively intrastate and government securities broker-dealers.[15]

These filing requirements originally were intended to assist the Commission in determining whether applicants had the requisite amount of capital and the capacity to operate as a broker-dealer. The rules of the SROs, however, also require broker-dealers to file a statement of financial condition, or to otherwise demonstrate their ability to conduct business as a broker-dealer, with their applications for membership. For example, the NASD By-laws require an applicant for membership to file, among other things, its most recent balance sheet, a computation of net capital, and a copy of its written supervisory procedures. The NASD pre-membership interview also addresses the applicant's business plans to determine their adequacy and consistency with the federal securities laws and the rules of the NASD.[16] This information, as well as other registration information obtained by the SROs, is readily available to the Commission.

Thus, the Commission believes that the filing requirements under rules 15b1–2, 15Ba2–2(b), and 15Ca2–2 are duplicative and not necessary to ensure that applicants for broker-dealer registration comply with the net capital and other requirements of the Exchange Act.[17] Eliminating these requirements would result in significant savings to broker-dealers without affecting the Commission's ability to monitor the financial condition of applicants. Moreover, it would simplify the Commission's entry into the CRD system, thereby facilitating the broker-dealer registration process.

IV. Broker-Dealer Successor Rules

A. Introduction

The Commission has promulgated several rules under the Exchange Act governing the registration of successors

---

[6] These broker-dealers would not be required to resubmit an application on their scheduled date.

Until further notice, all non-NASD members would need to file separately with the states in which they are registering. The NASD is developing modifications to the CRD system that eventually will allow non-NASD members to file for registration with the states through the CRD system.

[7] Form BDW instructs broker-dealers that file FOCUS reports to attach a copy of the "Statement of Financial Condition" and "Computation of Net Capital" sections. Broker-dealers that do not file FOCUS reports are required to attach a statement of financial condition giving the type and amount of the firm's net worth and assets and liabilities. Both the FOCUS report and the statement of financial condition must be dated no earlier than 10 days before the Form BDW is filed.

[8] Prior to September 30, 1993, non-NASD members would file Form BDW with the CRD only if they have already filed Form BD with the CRD. If they have not previously filed Form BD with the CRD, they would continue to file with both the Commission and the CRD.

[9] See n. 7, *supra*.

[10] 17 CFR 240.15b1–1, 240.15b3–1, and 240.15b6–1. Amendments also would be made to the analogous rules governing non-bank municipal securities dealers (whose business is exclusively intrastate) and government securities broker-dealers. *See* 17 CFR 240.15Ba2–2, 240.15Bc3–1, 240.15Ca1–1, 240.15Ca2–1, and 240.15Cc1–1.

[11] The Special Instructions to Form BD originally were adopted in Securities Exchange Act Release No. 11595 (August 14, 1975).

[12] However, the 45-day period under Section 15(b)(1) of the Exchange Act (or any other relevant filing period) would not begin to run until the CRD has transmitted the form data to the Commission and the Commission has determined that the filing is complete. For a brief discussion of Section 15(b)(1) *see* note 33, *infra*.

[13] 17 CFR 240.15b1–2, 240.15Ba2–2(b), and 240.15Ca2–2. Rule 15b1–2 was adopted in its current form in Securities Exchange Act Release No. 9594 (May 12, 1972), 37 FR 9668.

[14] 17 CFR 240.15c3–1.

[15] In lieu of a computation of net capital in compliance with the Exchange Act or the rules of the applicable national securities exchange, Rule 15Ca2–2(a) requires a firm registering as a government securities broker or dealer to provide a computation of capital in accordance with the capital requirements established by the Secretary of the Treasury. Firms applying for registration as a government securities broker or dealer also are not required to submit certain representations. See note 17, *infra*.

[16] NASD Schedules to the By-Laws, Schedule C, part I, §§ (1)(a),(c), NASD Manual (CCH) ¶ 1783.

[17] Currently, firms registering as government securities broker-dealers are not required to file a description of their arrangements for personnel, physical facilities, preservation of books and records, and supervision of personnel. As the Commission noted in the adopting release for rule 15Ca2–2, "generally this information is either disclosed on Form BD or is readily ascertainable by a SRO when it conducts a pre-membership interview, and therefore these requirements place an unnecessary burden on applicants." See Securities Exchange Act Release No. 24372 (April 21, 1987), 52 FR 16833.

to broker-dealers.[18] The broker-dealer successor rules apply when an unregistered entity assumes and continues the business of a registered broker-dealer, which then ceases its broker-dealer activities. The purpose of these rules is to allow the unregistered broker-dealer to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor broker-dealer.

The broker-dealer successor rules are intended to be used only in situations where there is a direct and substantial business nexus between the predecessor and the successor broker-dealer; they do not contemplate the sale of broker-dealer registrations. To ensure that there is a legitimate connection between the predecessor and successor, the rules require that the successor broker-dealer acquire or assume substantially all of the assets and liabilities of the predecessor's business.[19] Although the successor broker-dealer need not acquire every asset and liability of the predecessor, under this standard no significant asset or liability may be omitted.[20]

In addition, because the successor rules are intended to allow an unregistered successor broker-dealer to rely on the registration of its predecessor for a limited period of time, they do not apply to corporate reorganizations that only involve registered broker-dealers. In those cases, there is no interruption in the business of the registered broker-dealers; thus, each broker-dealer would only be required to file an amendment to Form BD pursuant to rule 15b3–1(b) to reflect any change in its operations. For instance, if two registered broker-dealers merge, the surviving broker-dealer would file an amended Form BD, while the acquired broker-dealer would file for withdrawal from registration on Form BDW. Similarly, if a person or entity merely acquires some or all of the shares of a registered broker-dealer, or if one registered broker-dealer purchases or otherwise assumes part of the business assets or personnel of another registered broker-dealer and both broker-dealers continue to operate as registered broker-dealers, there would be no need to use the successor provisions.[21]

B. Proposed Amendments to Rule 15b1–3

1. Succession by Amendment

The Commission is proposing minor structural changes to Rule 15b1–3 [22] in order to address certain ambiguities that have arisen with respect to the registration of successors to registered broker-dealers. The amendments to paragraph (b) of the rule would clarify that the only successions that may be completed by filing an amendment to Form BD are those successions that are the result of a formal change in the structure or legal status of the broker-dealer; *i.e.*, successions that involve the creation of a new legal entity, but no practical change in the operations of the broker-dealer. Thus, an internal corporate reorganization or restructuring in which broker-dealer activities are transferred from one entity to another within the same organization, but that does not result in a change of control of the broker-dealer, would be filed by amendment.[23] In contrast, a corporate reorganization involving a change of control, such as a change in the beneficial owners of the broker-dealer, must be filed by application on Form BD pursuant to paragraph (a) of Rule 15b1–3, described below.[24]

In addition, a succession based on a change in the state of incorporation or a change in the form of business, such as a change from a partnership to a corporation or a change in the tax status of a corporation, may be completed by amending the predecessor's Form BD promptly after the succession.[25] Finally, a change in the composition of a partnership by death, withdrawal, or inclusion of a partner, which results in the dissolution of the partnership under local law, would be completed by filing an amendment to Form BD in order to reflect the changes in the partnership.[26] In all of the above situations, the predecessor broker-dealer must cease operating as a broker-dealer.

2. Succession by Application

The Commission also is proposing several technical amendments to paragraph (a) of Rule 15b1–3 to clarify that in all other successor situations, the successor may operate under the registration of the predecessor for a limited period of time only if it files its own complete application for registration on Form BD. Thus, when an unregistered entity purchases or assumes substantially all of the assets and liabilities of a registered broker-dealer and then operates its business through the unregistered entity, the new entity must file a complete application on Form BD promptly after the succession, while the predecessor must file for withdrawal from registration on Form BDW pursuant to Rule 15b6–1.[27]

---

[18] 17 CFR 240.15b1–3, 240.15Ba2–4, 240.15Ba2–6, and 240.15Ca2–3.

[19] A broker-dealer's status under the successor rules, however, is not determinative of whether the broker-dealer will be held liable for the acts of its predecessor. See, generally, *Ricciardello* v. *J.W. Gant & Co.*, [1989–1990] Fed. Sec. L. Rep. (CCH) ¶ 94,798 (July 7, 1989); and Securities Exchange Act Release No. 25531 (March 30, 1988) (successor broker-dealer held liable for the predecessor's failure, prior to the succession, to maintain the required balance of cash or qualified securities in its reserve account for the exclusive benefit of customers).

[20] The predecessor's liabilities, for example, may include: customer claims, monies or securities due to customers or other broker-dealers, pending legal actions relating to securities activities, unsatisfied judgments, and outstanding fees or fines. In a few instances, the staff of the Commission has granted no-action relief to allow successor broker-dealers to rely on Rule 15b1–3 without assuming a specific asset or liability of the predecessor. See, *e.g.*, *Alpha Management Inc.* (December 21, 1989) [available on LEXIS] (permitting a successor broker-dealer to file an application under paragraph (a) of Rule 15b1–3 without acquiring the shares of a subsidiary not engaged in broker-dealer activities); and *Franklin Financial Services, Inc.*, [1987–1988] Fed. Sec. L. Rep. (CCH) ¶ 78,529 (July 2, 1987) (allowing a successor to proceed under paragraph (a) without assuming unknown contingent liabilities of the predecessor The predecessor represented that it would retain adequate funds in escrow to meet any such contingent liabilities). See also, generally, Rubin & Wilkinson, *Corporate Restructuring: The Meaning of "Substantially All" of a Corporation's Assets*, Insights, 9–13 (July 1991).

[21] In the latter case, both broker-dealers would file an amendment to their Form BD to reflect any changes in their operations.

[22] Rule 15b1–3 was adopted in its current form in 1985 pursuant to section 15(b)(2)(A) of the Exchange Act [15 U.S.C. 78o(b)(2)]. See Securities Exchange Act Release No. 22468 (September 26, 1985), 50 FR 41867.

[23] For example, an unregistered entity may acquire substantially all of the assets and liabilities of a registered entity owned by the same parent corporation by filing an amendment, provided that the surviving broker-dealer continues to be wholly owned by the parent corporation.

[24] For these purposes, the word "control" is defined in the instructions to Form BD.

[25] The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), Schedule D, and any other pages containing information that is no longer accurate as a result of the change in the form of organization of the broker-dealer. This amendment, which must be filed within 30 days of the date of the succession, would be deemed an application for registration filed by the predecessor and adopted by the successor.

[26] Other successor situations that may be completed by filing an amendment include a change: (i) From general corporation to S corporation status under subchapter S of the Internal Revenue Code of 1986, as amended; and (ii) in a registered broker-dealer's name that results in the dissolution of the broker-dealer under local law. If a broker-dealer's name change does not alter its legal status, however, the successor rules do not apply; instead, the broker-dealer would be required to promptly file an amendment to Form BD under Rule 15b3–1(b) to reflect its new name.

[27] 17 CFR 240.15b6–1. For example, a corporation providing both advisory and broker-dealer services may wish to separate these services by spinning off the broker-dealer activities into a new unregistered subsidiary. If the unregistered subsidiary acquires substantially all of the assets and liabilities of the broker-dealer operation or division of the corporation and there is a change of control of the broker-dealer, then paragraph (a) of Rule 15b1–3 would apply. See, e.g., *Alpha Management Inc.* (December 21, 1989) [available on LEXIS]. The

Continued

Similarly, if two or more registered broker-dealers consolidate their firms and conduct their business through a new unregistered entity, which assumes substantially all of the assets and liabilities of the predecessor entities, the new entity would be required to file a complete application on Form BD, while the consolidating firms would each be required to file for withdrawal on Form BDW.[28]

Paragraph (a) of Rule 15b1–3 also applies to dual successions,[29] in which one registered broker-dealer subdivides its business into two or more new unregistered entities. A dual succession may occur, for instance, when a full service broker-dealer decides to separate its introducing broker functions from its clearing broker functions by creating two new separate entities. In that case, the successors in combination must acquire substantially all of the assets and liabilities of the predecessor broker-dealer. Each successor must then file a complete application on Form BD promptly after the succession, while the predecessor broker-dealer must file an application for withdrawal on Form BDW.

Although, as discussed above, the broker-dealer successor rules may be used to subdivide or reorganize a registered broker-dealer for legitimate business reasons, they may not be used to eliminate a substantial liability, to spin off personnel, or to transfer the registration of a "shell" broker-dealer that does not conduct any business.[30] Moreover, the broker-dealer successor rules are not available in cases where the predecessor broker-dealer continues to engage in broker-dealer activities.[31] Otherwise, confusion may result as to the registration status of the predecessor broker-dealer. Thus, if a registered broker-dealer shifts a portion of its business operations to a new unregistered entity, but remains in the broker-dealer business, the new entity must file a complete application for registration on Form BD and refrain from effecting securities transactions until its application is approved by the Commission pursuant to Section 15(b) of the Exchange Act.[32]

3. Filing

In addition to the structural amendments discussed above, the Commission is proposing to amend paragraph (a) of Rule 15b1–3 to provide that the registration of a predecessor broker-dealer ceases to be effective as the registration of the successor broker-dealer forty-five days after the application for registration on Form BD is filed by the successor, rather than seventy-five days after the succession.[33] The proposed amendments are intended to address situations in which a successor broker-dealer submits an application within thirty days of the succession, but because the application is incomplete in certain minor respects, the seventy-five day period expires before the successor broker-dealer's registration becomes effective. Under the modified rule, the forty-five day period would not begin to run until a complete application has actually been "filed" with the Commission.[34]

C. Proposed Amendments to Other Successor Rules

The Commission is proposing to revise the language of Rule 15Ca2–3 to be consistent with the proposed amendments to Rules 15b1–2 and 15b1–3, discussed above. Under rule 15Ca2–3,[35] a government securities broker-dealer that succeeds to and continues the business of a government securities broker-dealer registered pursuant to section 15C(a)(1)(A) of the Exchange Act,[36] may operate under the registration of the predecessor for seventy-five days if, within thirty days of the succession, it files (i) its own application for registration on Form BD, or (ii) in the case of a succession based on a change in the date or state of incorporation, form of organization, or composition of a partnership, an amendment to the predecessor's Form BD. The amendments to paragraph (a) of Rule 15Ca2–3 would provide that the registration of the predecessor broker-dealer ceases to be effective as the registration of the successor broker-dealer forty-five days after the application for registration is filed by the successor. For the reasons discussed in Part III of this release, the amendments to paragraph (b) of the rule would eliminate the requirement to file a statement of financial condition in conjunction with the amended Form BD.

Finally, corresponding structural changes would be made to Rules 15Ba2–4 and 15Ba2–6,[37] which permit a municipal securities dealer that succeeds to and continues the business of a registered municipal securities dealer to rely on the registration of the predecessor if it files an application or an amendment for registration on Form MSD (for a municipal securities dealer that is a bank or a separately identifiable department or division of a bank), or Form BD (for all other municipal securities dealers).

V. Form BD

The Commission also is proposing to amend Form BD to provide a uniform definition of the term "proceeding," as used in the disciplinary background provisions of the form. Specifically, Item 7(G) of Form BD requires applicants for broker-dealer registration to disclose whether they or their control affiliates are "now the subject of any proceeding that could result in a 'yes' answer" to the questions posed in parts A through F. The Commission historically has interpreted the term "proceeding" to include only administrative proceedings, civil litigation initiated by regulatory agencies, and final criminal actions.[38] In contrast, NASAA has interpreted "proceeding" to also include pending criminal charges and private civil litigation.[39]

---

investment adviser would be subject to separate but similar successor provisions. *See* 15 U.S.C. 80b–3(g); 17 CFR 275.203–1(b), (c), (d).

Under the CRD's "mass transfer" categories (which determine whether the registered personnel of a broker-dealer may be transferred to another entity), this type of reorganization is referred to as an "acquisition."

[28] The CRD refers to this type of restructuring as a consolidation.

[29] The CRD refers to dual successions as partial acquisitions.

[30] *See* Securities Exchange Act Release No. 22468 (Sept. 26, 1985), 50 FR 41867.

[31] See, generally, *F.W. Horne & Co., Inc.* 38 S.E.C. 104 (1957) (finding that a successor broker did not succeed to the registration of another broker for purposes of the predecessor rule to rule 15b1–3, where the predecessor continued as a corporate entity with the ability to resume business in the future, and where the successor failed to acquire all of the assets of the predecessor broker).

[32] 15 U.S.C. 78o(b). The predecessor broker-dealer also would be required to promptly file an amendment on Form BD pursuant to rule 15b3–1(b) to reflect any changes in its operations. The CRD refers to this type of reorganization as a partial acquisition.

[33] This 45-day period would be consistent with Section 15(b)(1)(B) of the Exchange Act, which provides that the Commission has 45 days in which to grant registration or to institute proceedings to determine if registration should be denied.

[34] Under Rule 0–3 [17 CFR 240.0–3], a report or application is not "filed" for purposes of the Exchange Act until it fully complies with all of the requirements of the applicable rule or provision of the statute.

A successor broker-dealer, however, would not be permitted to "lock in" the 30 day window period by deliberately submitting an incomplete application, or by otherwise failing to file an application in good faith.

[35] Rule 15Ca2–3 was adopted in Securities Exchange Act Release No. 24372 (April 21, 1987), 52 FR 16833.

[36] 15 U.S.C. 78o–5(a)(1).

[37] Rules 15Ba2–4 and 15Ba2–6 were adopted in Securities Exchange Act Release No. 12802 (July 7, 1976), 41 FR 28948. As proposed, Rule 15Ba2–6 would be redesignated as Rule 15Ba2–4(b).

[38] Securities Exchange Act Release Nos. 2478 (February 6, 1976), 41 FR 7089, and 22468 (September 26, 1985), 50 FR 41867.

[39] NASAA Resolution (September 14, 1989).

In an effort to resolve these differing interpretations, the Commission, NASAA, and the NASD have developed a joint definition of the term "proceeding." Under this definition, which would be added to the instructions to Item 7, the term "proceeding" would include formal administrative and civil actions initiated by SROs, governmental agencies, and foreign financial regulatory authorities (as defined in Form BD), felony criminal indictments and informations, and misdemeanor informations involving the securities-related matters listed in Item 7(A)(1) of the form.[40] This interpretation of "proceeding," however, would not require broker-dealers to disclose investigations, civil litigation not initiated by an SRO or governmental agency, or criminal arrests and charges effected in the absence of a formal criminal indictment or information.

The Commission believes that adding this definition to Form BD would eliminate any existing confusion in the broker-dealer community as to the extent of disclosure required under Item 7. It also would be consistent with the purpose of Form BD—to provide a uniform application form that can be used to register with the states, the Commission, and the NASD.[41]

In addition, the Commission is proposing two clarifying amendments to Form BD. First, the instructions to the form would be revised to state explicitly that broker-dealers may only use the current version of Form BD when filing an application or an amendment.[42] Second, Schedule A would be amended to add a question that asks whether the applicant has any indirect owners to report on Schedule B. If this amendment is adopted as proposed, applicants will be able to avoid having to file a Schedule B only to indicate that they have no indirect owners.

VI. Schedule I of the FOCUS Report

Rule 17a–5 under the Exchange Act generally requires all registered broker-dealers to file monthly and quarterly reports with the Commission on Form X–17A–5 (also known as the "FOCUS" report).[43] To supplement either Part II or IIA of the FOCUS report, registrants also are required to file Schedule I at the end of each fourth quarter.[44] The purpose of this schedule is to obtain information about the economic and financial characteristics of the registrant.

Item 19 of Schedule I to the FOCUS report currently requests information about the registrant's affiliation with any foreign broker-dealer or bank. In addition to information about foreign bank affiliations, the Commission believes that it would be useful for regulatory purposes to obtain information about broker-dealer affiliations with U.S. banks. The Commission therefore is proposing to amend Schedule I to require broker-dealers to disclose whether they are an affiliate or subsidiary of a U.S. bank, and if so, to give the name of that affiliate or parent company, and the type of institution. The "Specific Instructions" to Schedule I also would be amended to refer to the definition of "bank" in section 3(a)(6) of the Exchange Act.[45]

VII. Conclusion and Request for Comments

The Commission believes that the proposed amendments to the broker-dealer registration rules would significantly reduce the burden on broker-dealers by eliminating the need to make multiple filings with federal and state securities regulators. The Commission solicits comments on these proposed amendments, including estimates of any costs or benefits perceived by commenters. In addition, the Commission requests comment on the proposed definition of "proceeding" and the amendment to Schedule I of the FOCUS report.

VIII. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[46] requires the Commission, in adopting rules under the Exchange Act, to consider the impact on competition of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed amendments to the rules would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, in accordance with the requirements of the Regulatory Flexibility Act,[47] the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") regarding the proposed amendments. The IRFA states that the objectives of the proposed amendments are to (i) streamline the broker-dealer registration process by providing "one stop filing" through the CRD and by eliminating unnecessary paperwork; (ii) provide the Commission with more immediate, electronic access to data in broker-dealer filings; (iii) clarify the broker-dealer successor rules; (iv) reconcile the Commission and NASAA's differing interpretations of the word "proceeding," as used in Form BD; and (v) enable the Commission to obtain information about registered broker-dealers' affiliations with U.S. banks. The proposed amendments to the broker-dealer registration rules are the result of the Commission's ongoing efforts to find ways to reduce the costs and burdens associated with broker-dealer registration.

The analysis indicates that approximately 92 percent of the 487 broker-dealers that applied for registration in the first six months of 1991 met the definition of "small business" in Rule 0–10(c)(1). The proposed amendments would eliminate some of the existing costs imposed on these small businesses.

In addition, the IRFA states that, except for the requirement that registered non-NASD member broker-dealers file a complete new Form BD with the CRD on a one-time basis, the proposed amendments to the registration rules would not impose any additional reporting, recording, or other

---

[40] A formal charge that is equivalent to an indictment or information but that is designated differently under state law also would be considered a "proceeding" for these purposes.

[41] If adopted as proposed, the joint definition would replace NASAA's interpretation of "proceeding," as expressed in its resolution, and the Commission's interpretation of "proceeding," as discussed in Securities Exchange Act Release Nos. 2478 (February 6, 1976), 41 FR 7089, and 22468 (September 26, 1985), 50 FR 41867.

[42] *I.e.*, the most recent form adopted by the Commission. As discussed above, in a separate release, the Commission is adopting several amendments to Form BD. Thus, broker-dealers filing for registration on or after November 16, 1992, the effective date of the form amendments, would need to file on revised Form BD.

[43] 17 CFR 240.17a–5. Form X–17A–5 appears at 17 CFR 249.617.

[44] See 17 CFR 240.17a–10. Pursuant to Rule 17a–10(a)(1), broker-dealers that are exempt from the filing requirements of Rule 17a–5(a) also are required to file Schedule I at the end of the calendar year.

[45] 15 U.S.C. 78c(a)(6). Under this section, the term "bank" is defined as: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; (c) any other banking institution doing business under the laws of any state or the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks; and (d) a receiver, conservator, or other liquidating agent of any institution or firm included in the above paragraphs. The Commission particularly requests comment on the proposed amendments to Schedule I.

[46] 15 U.S.C. 78w(a)(2).

[47] 5 U.S.C. 603(a).

compliance requirements on broker-dealers. The proposed amendments to Form BD and Schedule I of the FOCUS report would impose additional reporting and other compliance requirements on broker-dealers only to the extent that they would need to review their current filings to determine whether those filings contain all of the information required by the amended forms. The Commission believes that no specific federal rules or forms directly duplicate or conflict with these rules and forms.

The IRFA discusses significant alternatives to the proposed amendments, including the establishment of differing reporting requirements, the use of performance standards, and an exemption for small broker-dealers. The analysis concludes that these alternatives would not accomplish the objectives of the proposed amendments, nor would they be consistent with their overall purpose, which is to simplify the registration process for all broker-dealers.

A copy of the IRFA may be obtained from Belinda Blaine, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., mail stop 5–1, Washington, DC 20549, (202) 504–2418.

List of Subjects in 17 CFR Parts 240 and 249

Registration of Brokers and Dealers, Registration of Government Securities Brokers and Government Securities Dealers, Registration of Non-Bank Municipal Securities Dealers; Reporting and Recordkeeping Requirements, Securities, Broker-Dealers.

IX. Statutory Basis and Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. By amending § 240.15b1–1 by designating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 240.15b1–1 Application for registration of broker or dealer.

(a) * * *

(b) Every application for registration of a broker or dealer that is filed on or after November 16, 1992, shall be filed with the Central Registration Depository.

(c) An application for registration that is filed with the Central Registration Depository pursuant to this section shall be considered filed with the Commission for purposes of section 15(b) of the Act.

§ 240.15b1–2 [Removed]

3. By removing § 240.15b1–2.

4. By revising § 240.15b1–3 to read as follows:

§ 240.15b1–3 Registration of successor to registered broker or dealer.

(a) In the event that a broker or dealer succeeds to and continues the business of a broker or dealer registered pursuant to Section 15(b) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor broker or dealer will cease to be effective as the registration of the successor broker or dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a broker or dealer succeeds to and continues the business of a registered predecessor broker or dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

5. By revising § 240.15b3–1 to read as follows:

§ 240.15b3–1 Amendments to application.

(a) Every registered broker or dealer who is not a member of the National Association of Securities Dealers, Inc. shall file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended), and any subsequent amendments thereto pursuant to paragraph (c) of this section, with the Central Registration Depository beginning:

(1) The week of January 11, 1993, in the case of a broker-dealer whose SEC registration number is between 8–1656 and 8–26116;

(2) The week of February 1, 1993, in the case of a broker-dealer whose SEC registration number is between 8–26158 and 8–33987;

(3) The week of May 3, 1993, in the case of a broker-dealer whose SEC registration number is between 8–34006 and 8–38760;

(4) The week of June 1, 1993, in the case of a broker-dealer whose SEC registration number is between 8–38763 and 8–41501;

(5) The week of July 5, 1993, in the case of a broker-dealer whose SEC registration number is between 8–41505 and 8–43006;

(6) The week of August 2, 1993, in the case of a broker-dealer whose SEC registration number is between 8–43009 and 8–43792; and

(7) The week of September 6, 1993, in the case of a broker-dealer whose SEC registration number is 8–43794 and above.

(b) If the information contained in any application for registration as a broker or dealer filed by a broker or dealer who is not a member of the National Association of Securities Dealers, Inc. becomes inaccurate for any reason prior to the applicable date set forth in paragraph (a) of this section, the broker or dealer shall promptly file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository.

(c) If the information contained in any application for registration as a broker or dealer, or in any amendment thereto, becomes inaccurate for any reason, the broker or dealer shall promptly file with the Central Registration Depository an amendment on current Form BD correcting such information.

(d) Every amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15(b), 17(a), 18, 32(a), and other applicable provisions of the Act.

6. By amending § 240.15b6–1 by redesignating paragraphs (b), (c), and (d), as paragraphs (c), (d), and (e), adding paragraph (b), and revising newly designated paragraph (e) to read as follows:

§ 240.15b6–1 Withdrawal from registration.

(a) * * *

(b) Every notice of withdrawal from registration as a broker or dealer that is filed on or after November 16, 1992, by a broker or dealer who has previously filed an application for registration with the Central Registration Depository shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a broker or dealer shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

* * * * *

(e) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15(b), 17(a), and other applicable provisions of the Act.

7. By revising § 240.15Ba2–2 to read as follows:

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

(a) An application for registration, pursuant to section 15B(a) of the Act, of a municipal securities dealer who is not subject to the requirements of § 240.15Ba2–1, that is filed on or after November 16, 1992, shall be filed with the Central Registration Depository on Form BD.

(b) Each applicant shall file with its application for registration a statement that such applicant is filing for registration as an intrastate dealer in accordance with the requirements of this section. Such statement shall be deemed a part of the application for registration.

(c) If the information contained in any application for registration pursuant to paragraph (a) of this section, or in any amendment to such application, is or becomes inaccurate for any reason, dealer shall promptly file with the Central Registration Depository an amendment on current Form BD correcting such information.

(d) Every application or amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15B, 17, 18(a), 32(a), and other applicable provisions of the Act.

8. By revising § 240.15Ba2–4 to read as follows:

§ 240.15Ba2–4 Registration of successor to registered municipal securities dealer.

(a) In the event that a municipal securities dealer succeeds to and continues the business of a registered municipal securities dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MSD, in the case of a municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or Form BD, in the case of any other municipal securities dealer, and the predecessor files a notice of withdrawal from registration on Form MSDW or Form BDW, as the case may be; *Provided, however,* That the registration of the predecessor dealer will cease to be effective as the registration of the successor dealer 45 days after the application for registration on Form MSD or Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal securities dealer succeeds to and continues the business of a registered predecessor municipal securities dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor dealer on Form MSD, in the case of a predecessor municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or on Form BD, in the case of any other municipal securities dealer, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Ba2–6 [Removed]

9. By removing § 240.15Ba2–6.

10. By amending § 240.15Bc3–1 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding paragraph (b), and revising newly designated paragraph (d) to read as follows:

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

(a) * * *

(b) Every notice of withdrawal from registration as a municipal securities dealer that is filed on Form BDW on or after November 16, 1992, by a dealer who has previously filed an application for registration with the Central Registration Depository shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a dealer on Form BDW shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

(c) * * *

(d) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15B, 17(a), and other applicable provisions of the Act.

11. By amending § 240.15Ca1–1 by adding paragraph (c) to read as follows:

§ 240.15Ca1–1 Notice of government securities broker-dealer activities.

* * * * *

(c) Any notice required pursuant to this section shall be considered filed with the Commission if it is filed with the Central Registration Depository.

12. By revising § 240.15Ca2–1 to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

(a) An application for registration, pursuant to section 15C(a)(1)(A) of the Act, of a government securities broker or government securities dealer that is filed on or after November 16, 1992, shall be filed with the Central Registration Depository on Form BD.

(b) Every registered government securities broker or government securities dealer who is not a member of the National Association of Securities Dealers, Inc. shall file a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository in accordance with the schedule set forth in § 240.15b3–1.

(c) Every application or amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15, 15C, 17(a), 18, 32(a), and other applicable provisions of the Act.

§ 240.15Ca2–2 [Removed]

13. By removing § 240.15Ca2–2.

14. By revising § 240.15Ca2–3 to read as follows:

§ 240.15Ca2–3 Registration of successor to government securities broker or government securities dealer.

(a) In the event that a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal

from registration on Form BDW: *Provided, however,* That the registration of the predecessor government securities broker or government securities dealer will cease to be effective as the registration of the successor government securities broker or government securities dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes.

This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

15. By amending § 240.15Cc1-1 by revising the section heading, redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding paragraph (b), and revising newly designated paragraph (d) to read as follows:

§ 240.15Cc1-1 Withdrawal from registration of government securities broker or government securities dealer.

(a) * * *

(b) Every notice of withdrawal from registration as a broker or dealer that is filed on or after November 16, 1992, by a broker or dealer who has previously filed an application for registration with the Central Registration Depository shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a broker or dealer shall be filed with the Commission; *except that* such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

(c) * * *

(d) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15, 15C, 32(a), and other applicable provisions of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Note: The following forms do not appear in the Code of Federal Regulations.

17. By revising Form BD (17 CFR 249.501), the Special Instructions for Completing or Amending Form BD, and the General Instructions to Form BDW (§ 249.501a).

Form BD—Uniform Application for Broker-Dealer Registration

Instructions for Form BD

1. Updating—By law, the applicant must update the Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed.

2. Contact Employee—The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format

• Attach an Executive Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Amendments to Schedules C, D and DRP also must be accompanied by an Executive Page (Page 1). Schedules A & B are amended by filing Schedule C.

• Type all information.

• Give the name of the broker-dealer and date on each page.

• Use only the current version of Form BD and its Schedules or a reproduction of them.

4. Definitions

• Applicant—The broker-dealer applying on or amending this form.

• Control—The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

• Jurisdiction—Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

• Person—An individual, partnership, corporation or other organization.

• Self-regulatory organization—Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. Schedules A, B and C—File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B.

6. Schedule D—Schedule D provides additional space for explaining "yes" answers to Form BD items (except for Item 7), but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule DRP—All information relating to an event reportable under Item 7 must be provided on Schedule DRP. Applicant may submit a partially completed Schedule DRP (as specified in the Schedule) only if the applicant or control affiliate for whom the Schedule is being filed has submitted a fully-completed Schedule DRP (in connection with another Form BD filing) or a DRP Page (in connection with a Form U-4 filing) relating to the occurrence of the same event to the Central Registration Depository (CRD) system of the NASD. In such cases this fully-completed Schedule DRP or DRP Page must be attached to the applicant's Schedule DRP.

8. Schedule E—Schedule E amendments reporting changes in Branch Offices may be submitted without an execution page.

9. Government Securities Activities

A. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

10. Federal Information Law and Requirements—The Exchange Act,

Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available.

Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

BILLING CODE 8010-01-M

FORM BD Page 3	Applicant:		CRD No.:	DATE MM/DD/YY

7. Background Information

Use Schedule DRP for providing details to "yes" answers to the questions in Item 7.

Definitions:

- Control affiliate - A person named in Items 1.A., 6. or in either Schedules A, B or C as control persons or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.

- Investment or investment-related - Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).

- Involved - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

- Foreign financial regulatory authority - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a membership organization, a function of which is to regulate the participation of its members in the activities listed above.

- Proceeding - A formal administrative or civil action initiated by a governmental agency, self-regulatory organization or foreign financial regulatory authority, a felony criminal indictment or information (or equivalent formal charge), or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

A. In the past ten years has the applicant or a control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic or foreign court to:

(1) a felony or misdemeanor involving:
- investment or an investment-related business
- fraud, false statements, or omissions
- wrongful taking of property, or
- bribery, forgery, counterfeiting or extortion? ..... Yes ☐ No ☐

(2) any other felony? ..... Yes ☐ No ☐

B. Has any domestic or foreign court:

(1) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity? ..... Yes ☐ No ☐

(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations? ..... Yes ☐ No ☐

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? ..... Yes ☐ No ☐

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes? ..... Yes ☐ No ☐

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

(5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity? ..... Yes ☐ No ☐

D. Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? ..... Yes ☐ No ☐

(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes? ..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule A of FORM BD Direct Owners and Executive Officers

Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 3)

1. Use Schedule A only in new applications to provide information on the direct owners and executive officers of the applicant. Use Schedule B in new applications to provide information on indirect owners. File all amendments on Schedule C. Complete each column.

2. List below the names of:

(a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individual with similar status or functions;

(b) in the case of an applicant that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the applicant, unless the applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

(c) in the case of an applicant that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

(d) in the case of an owner that is a trust, the trust and each trustee.

3. Are there any indirect owners of the applicant required to be reported on Schedule B?..... Yes ☐ No ☐

4. Complete the "Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

5. (a) In the "Control Person" column, enter "yes" if person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons."

(b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: NA - less than 5% A - 5% but less than 10% B - 10% but less than 25% C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

BILLING CODE 8010-01-C

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, With the U.S. Securities and Exchange Commission

How to File

File one manually signed and notarized Form BD (with the schedules). Keep a copy for your files. A copy may be filed if manually signed and notarized and on standard 8½ × 11 white paper, in the same size as the original.

To file an amendment to Form BD, complete all amended pages or schedules and file with page 1, the execution page.

Where to File

Broker-dealers that are applying for registration should file Form BD and its schedules with the Central Registration Depository (CRD), P.O. Box 9401, Gaithersburg, Maryland 20898–9401. Any subsequent amendments to Form BD also should be filed with the CRD.

All registered broker-dealers that are not members of the National Association of Securities Dealers, Inc. (NASD) should file a complete Form BD and its schedules with the CRD during the week of:

(1) January 11, 1993, in the case of all non-NASD member broker-dealers whose SEC registration numbers are between 8–1656 and 8–26116;

(2) February 1, 1993, for all non-NASD members whose SEC registration numbers are between 8–26158 and 8–33987;

(3) May 3, 1993, for all non-NASD members whose SEC registration numbers are between 8–34006 and 8–38760;

(4) June 1, 1993, for all non-NASD members whose SEC registration numbers are between 8–38763 and 8–41501;

(5) July 5, 1993, for all non-NASD members whose SEC registration numbers are between 8–41505 and 8–43006;

(6) August 2, 1993, for all non-NASD members whose SEC registration numbers are between 8–43009 and 8–43792; and

(7) September 6, 1993, for all non-NASD members whose SEC registration numbers are 8–43794 and above.

Any subsequent amendments to these Form BD filings also should be filed with the CRD. Non-NASD members that need to file an amendment to their Form BD before their scheduled date should promptly file a complete Form BD with the CRD.

Foreign Broker-Dealers

Rules 15b1–5 and 15Ca2–5 require non-resident broker-dealers applying for registration to provide the Commission with a consent and power of attorney. This consent and power of attorney designate the Commission as agent for the service of process of any papers in connection with actions arising from the broker-dealer's business that are subject to the jurisdiction of the United States and that accrue while the broker-dealer is registered with the Commission. This consent and power of attorney, which is in addition to and separate from the consent to service of process provided on Form BD, should be filed directly with the Commission. A copy also should be filed with the CRD as part of the application on Form BD.

Successor Registration

A broker-dealer that assumes substantially all of the assets and liabilities, and that continues the business, of a registered predecessor broker-dealer is a successor broker-dealer. Rules 15b1–3, 15Ba2–4, and 15Ca2–3 require a successor broker-dealer to file a new Form BD (or, in special instances, to amend the predecessor broker-dealer's Form BD) within 30 days. The filing should indicate on page 2 of the form that the applicant is a successor. (*See* Securities Exchange Act Release No. [ ]).

Prohibited Broker-Dealer Names

* * * * *

Uniform Request for Broker-Dealer Withdrawal

General Instructions

- Each copy of this form must be *manually signed* by the proper individual.
- Type all information.
- Use only the Form BDW or a reproduction of it.
- *Filing Requirements*

Full Withdrawal

NASD Members: file Form BDW with the CRD beginning on November 16, 1992.

Non-NASD Members: file Form BDW with the CRD beginning on September 30, 1993. Prior to September 30, 1993, file Form BDW with the CRD if Form BD has already been filed with the CRD; if not, file with both the SEC and the CRD.

Attach a copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. Firms that are not required to file FOCUS Reports should attach a Statement of Financial Condition giving the type and amount of the firm's assets, liabilities, and net worth. The FOCUS Report and Statement of Financial Condition must reflect the finances of the firm no earlier than 10 days before Form BDW is filed.

Non-NASD Members only should send a copy of Form BDW and all attachments to the Office of Filings, Information, and Consumer Services, SEC, 450 5th St., N.W., Washington, DC 20549.

Check with the states where registered for additional filing requirements.

Partial Withdrawal

File Form BDW with the CRD. Check with the states where registered for additional filing requirements. Amend Form BD and file with the CRD in accordance with the instructions to the form.

18. By amending Form X–17A–5 Schedule I (§ 249.617) by adding instruction 19a, b, and c to the Specific Instructions, redesignating Questions 19–22 as Questions 20–23, and adding Question 19 to read as follows:

Form X–17A–5, Schedule I.

* * * * *

Specific Instructions

* * * * *

19a b & c—Report whether respondent is directly or indirectly controlled by, or under common control with, a U.S. bank. If the answer is "yes," provide the name of the affiliated bank and/or bank holding company, and describe the type of institution. The term "bank" is defined in Section 3(a)(6) of the Securities Exchange Act of 1934.

* * * * *

19. (a) Respondent is directly or indirectly controlled by, or under common control with, a U.S. bank.

(Enter applicable code: 1=Yes 2=No) ____

(b) Name of parent or affiliate _____

(c) Type of institution _____

* * * * *

By the Commission.

Dated: July 27, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18170 Filed 7–30–92; 8:45 am]

BILLING CODE 8010–01–M

Reader Aids

Federal Register

Vol. 57, No. 148

Friday, July 31, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

51.....31947
305.....30101, 32881

3 CFR

Proclamations:
6352 (See USTR Notice of July 9).....30531
6428 (See Notice of July 10).....30726
6447 (See USTR Notice of July 8).....30286
6452.....29429
6453.....29625
6454.....29629
6455.....30069
6456.....30097
6457.....31627
6458.....31945
6459.....32413
6460.....32877
6461.....33423
6462.....33857

Executive Orders:
12543 (See rule of June 29).....29424
12544 (See rule of June 29).....29424
12722 (See Notice of July 21, 1992).....32875
12724 (See Notice of July 21, 1992).....32875
12735 (See Interim rule of July 7, 1992).....31309
12803 (See Notice of June 18).....28867
12808 (See DOT notice of July 13).....32051
12810 (See DOT notice of July 13).....32051
12812.....32879

Administrative Orders:
Presidential Determinations:
No. 92-34 of June 22, 1992.....30099
No. 92-35 of June 30, 1992.....33421
No. 92-36 of July 21, 1992.....33623

Notices:
July 21, 1992.....32875

4 CFR

22.....31272, 33392
30.....31272, 33392

5 CFR

294.....32149
351.....32685
531.....32151
532.....29783, 30635
550.....31629
831.....29783, 32153, 33570
838.....33570
841.....32153, 33570
842.....32685, 33570
843.....29783, 33570
846.....33570
870.....29783
890.....33570
1201.....32881
2610.....33267

Proposed Rules:
351.....31332
532.....33130
591.....32183
831.....31333
843.....31333

7 CFR

301.....31303, 31305, 31947
318.....31306
905.....31089, 31235
916.....31090, 31235
917.....31090, 31092
946.....30379
948.....30380
971.....31631
980.....30380
981.....30382
989.....31632
1093.....31308
1096.....31635
1205.....29181, 29431
1209.....31948
1220.....29436, 31094
1430.....30987
1435.....32155, 33425
1940.....33097
1942.....33097
1951.....33097
1955.....31636
2003.....33097

Proposed Rules:
12.....29658
13.....31668
51.....29449, 33459
55.....29660, 32184
56.....29660, 32184
58.....33130
59.....29660, 32184
70.....29660, 32184
301.....33905
318.....31130
400.....30430
723.....31325
800.....31668
910.....31670

928.....31142
987.....31670
1421.....32454
1427.....32454
1435.....33459
1703.....32184
1942.....31462

8 CFR

103.....33859
204.....33859
214.....29193, 31954, 33272, 33425
242.....30898
245.....33859
251.....29193
258.....29193
270.....33862
274a.....31954

9 CFR

54.....33625
77.....31429
78.....31430
79.....33625
96.....29784
98.....29193
122.....30898
156.....30898
318.....33633
327.....30635

Proposed Rules:

50.....31671
51.....29225, 31671
54.....33656
77.....31671
78.....31671
92.....31671
124.....30926
145.....31563
147.....31563
160.....30432
161.....30432
162.....30432
317.....31972
381.....31972

10 CFR

50.....30383
70.....33426
72.....33426
73.....33426
75.....33426
170.....32691
171.....32691
707.....32652

Proposed Rules:

61.....32743
605.....30171
707.....32664
1706.....31143

11 CFR

102.....31424

Proposed Rules:

109.....33548
110.....33548
114.....33548

12 CFR

4.....32415
207.....33101
220.....33101
221.....33101
224.....33101
225.....30387
545.....33432
561.....33432
563.....33432
563c.....33432
567.....33432
571.....33432
603.....32420
611.....33104
1102.....31645
1615.....32881
1620.....32393

Proposed Rules:

Ch. I.....31336
6.....29808
19.....29808
34.....31594
Ch. II.....31336
206.....31974
208.....29226, 31594
225.....31594
263.....29226
Ch. III.....31336
308.....29662
325.....29662
327.....29938
333.....30433
362.....30435
365.....31594
563.....31336, 31594, 33662
565.....29826, 31404
607.....31673
618.....31673
625.....31463
1625.....33133

13 CFR

101.....30391
121.....32889

Proposed Rules:

121.....32926

14 CFR

21.....31957, 33868, 33869
23.....31957
25.....33868, 33869
39.....29194–29201, 29785, 30111, 30113, 30392–30534, 31096, 31104, 31431–31443, 31654, 31959, 33105–33108
71.....30115, 30637–30818, 31960, 31961, 32890, 33110, 33872, 33873
91.....30818
97.....29442, 29443, 32722, 32724
121.....31275

Proposed Rules:

21.....31986
29.....31986
39.....29450–29453, 29681–29684, 29785, 30173, 30176, 30686, 30700, 31341, 31754, 31989, 31992, 32744–32747, 33460
61.....32680
71.....29454, 29455, 29686, 29687, 30178, 30179, 30702, 30932, 31993, 32749, 33906, 33908
121.....32846

15 CFR

6.....30115
771.....30899, 31658
774.....30899
785.....31658
799.....31309
906.....31444
907.....31445
928.....31105
932.....31105
945.....31660

Proposed Rules:

921.....31926
922.....31150

16 CFR

Proposed Rules:

1204.....31467
1205.....31155

17 CFR

140.....29203
145.....29203, 31563
240.....31445, 32159
249.....32159, 34208
250.....31120

Proposed Rules:

150.....31674
229.....29582, 31156
230.....32458, 32461
239.....32461
240.....29564, 29582, 32461, 34048
249.....29564, 32461, 34048
250.....31156

18 CFR

152.....32890
157.....29631
271.....31123
1301.....33633

19 CFR

4.....29633, 29634, 33274
10.....30638
162.....30639, 31754
353.....30900
355.....30900

Proposed Rules:

10.....33909
101.....31677, 33461, 33462
102.....33462
133.....30703
142.....33463

20 CFR

404.....30116
655.....29203, 30640, 32894

Proposed Rules:

404.....32926
416.....29244, 32926, 33137

21 CFR

2.....29353
5.....29353
10.....29353
73.....32174
176.....31312
177.....32421
178.....32421
310.....29353
314.....29353
320.....29353
356.....33237
443.....29353
510.....30641, 31313, 32175
520.....32175
524.....31314
540.....32895
558.....35176
573.....33244
807.....29354
1308.....31126, 32423

Proposed Rules:

Ch. I.....32185, 33283, 33915
5.....32750
20.....32750
101.....32058, 32750, 32751
131.....32470
Ch. III.....31160
166.....33916
341.....33663
356.....30534
821.....31754
1301.....33465
1304.....33465
1308.....32937

22 CFR

41.....31446
121.....32148
172.....32896

23 CFR

Proposed Rules:

140.....31467
650.....29689
750.....31470

24 CFR

25.....31048, 31754
44.....33252
45.....33252
50.....32106
85.....33252
201.....30394
202.....31048, 31754
207.....33252, 33846
213.....33252, 33846
215.....33846
219.....32398
220.....33846
221.....33252, 33846
231.....33846
232.....33252, 33846
234.....33846
236.....33252, 33846
242.....33252, 33846
277.....33252
280.....33252
570.....33252
574.....32106
575.....33252
576.....33252
577.....33252
578.....33252
579.....33252
880.....33252, 33846
881.....33252, 33846
882.....33846
883.....33252, 33846
884.....33252, 33846
885.....33252, 33846
886.....33252, 33846
887.....33846
889.....33846
890.....33846
905.....31962, 33846
906.....31962
965.....33846

25 CFR

Proposed Rules:

515.....30353
519.....30346
522.....30346

523.....30346
524.....30346
556.....30346
558.....30346
571.....30584
573.....30584
575.....30584
577.....30584

26 CFR

1.....31754, 33442, 33634
43.....33635
48.....32424
53.....33442
602.....32424

Proposed Rules:

1.....29246, 29851, 30451, 31344, 33467, 33663
49.....33918
301.....29248, 32472, 32473

27 CFR

4.....33110
5.....31126
19.....32176
47.....29787
179.....29787

Proposed Rules:

4.....29456, 33139
9.....33139
20.....29763
24.....33467

28 CFR

0.....30395, 31314, 32438
20.....31315
44.....30397

29 CFR

20.....31450
506.....32894
507.....29203, 30640
571.....31563
1425.....30397
1910.....29204–29206
2610.....31318
2619.....31319
2622.....31318
2644.....31320
2676.....31321

Proposed Rules:

42.....32939
470.....33403

30 CFR

816.....33874
934.....33115
935.....33116
946.....29788
950.....30121

Proposed Rules:

48.....29853
75.....29853
77.....29853
202.....31471
902.....33664
914.....31161, 31162, 33665
935.....31163, 33139
938.....33666, 33668

31 CFR

550.....29424

Proposed Rules:

357.....33470

32 CFR

165.....29619
169a.....29206
290.....30904
321.....33123
385.....32178
505.....33125
706.....31451, 31452

Proposed Rules:

165.....29618
516.....31852
701.....33285

33 CFR

81.....29218
95.....33260
100.....30403, 30641, 30644, 33444, 33445
117.....30403, 30647
151.....33260
161.....31660
165.....30405, 30648, 31322, 31453, 31663, 33637
402.....30904

Proposed Rules:

100.....30704
110.....31471
117.....30451, 30647, 33286
155.....29354, 33287
165.....31472
168.....30058
334.....32474

34 CFR

74.....30328
75.....30328
76.....30328
77.....30328
237.....30328
263.....30328
300.....30328
356.....30328
562.....30328
630.....30328
653.....30328
654.....30328
674.....32342
675.....32342
676.....32342
762.....30328

Proposed Rules:

366.....30866
668.....30826

35 CFR

Proposed Rules:

133.....32187

36 CFR

7.....29794
327.....29218

37 CFR

1.....29634, 32439
2.....29634
3.....29634

Proposed Rules:

1.....29248, 31344
10.....29248

38 CFR

0.....31006
1.....31006, 33875
2.....31006
3.....31006, 33875
4.....31006
6.....31006
8.....31006
9.....31006
10.....31006
11.....31006
12.....31006
13.....31006
14.....31006, 33877
16.....31006
17.....31006
18.....31006
18a.....31006
18b.....31006
21.....31006
36.....31006, 31323
39.....31006
41.....31006
43.....31006
44.....31006
45.....29798

Proposed Rules:

3.....30707
17.....33471
21.....33473, 33474

39 CFR

20.....30651
111.....30794, 32899
233.....32726
601.....31128

Proposed Rules:

111.....32188, 32475
3001.....31346

40 CFR

51.....32314
52.....32314
60.....29649, 30654, 32314
61.....29649
70.....32250
82.....31242, 33754
86.....30054, 30656, 31888
122.....33040
123.....33040
124.....30656
130.....33040
141.....31776
142.....31776
147.....33445
148.....31962
164.....30656
180.....30132, 31324, 31454, 32440
185.....32440
261.....29220, 30657
265.....30657
271.....29446, 30905, 32726, 33638
712.....30771
716.....30771
721.....31325, 31963, 32441

Proposed Rules:

Ch. I.....30708, 31473
25.....31164
51.....33287, 33314
52.....31477, 31678, 32191, 33314
72.....29940
73.....29940
80.....31165
85.....33141
86.....33141
122.....32475
123.....33051
180.....30132, 30454, 31346, 31479, 32753, 33475, 33477
185.....32753
186.....32753
260.....31164
261.....31164
262.....31164
264.....31164
268.....31164
300.....30452

41 CFR

50–201.....31566
101–45.....29804, 32446

42 CFR

Ch. I.....32447
60.....30534
405.....33878
410.....33878
412.....33878
413.....33878
482.....33878
493.....31664, 33992
498.....33992

Proposed Rules:

412.....30301
413.....30301

43 CFR

2740.....32730
3260.....29650
4700.....29651

Proposed Rules:

3160.....32756

Public Land Orders:

6932.....31404
6936.....32180
6937.....32180

44 CFR

65.....32899, 32901
67.....32734

Proposed Rules:

59.....33669
61.....33669
67.....32939
81.....32192
206.....29854
362.....30455

45 CFR

201.....30407
204.....30407
205.....30132, 30407
206.....30132
232.....30132, 30407
233.....30132, 30407
234.....30132
237.....30132
301.....30407
302.....30858
303.....29763, 30658, 31235
801.....32447
1355.....30407

Proposed Rules:

96.....31682
670.....33918
671.....33918
672.....33918
1607.....33697
1609.....33698
1610.....33698
1611.....33698
1612.....33699
1626.....33699

46 CFR

16.....31274

Proposed Rules:

174.....32624
572.....31481
586.....29259, 30182

47 CFR

Ch. I.....33275
1.....32180
15.....33447
73.....29654, 29655, 29805, 29806, 31664, 31665, 31970, 31971, 33448–33450
90.....32448, 32450
97.....32735

Proposed Rules:

Ch. I.....33163
1.....33700
22.....29260, 30189
34.....33700
35.....33700
43.....33700
65.....31994
69.....31994
73.....29691, 29805, 29806, 31691, 31692, 31996, 32499, 33478
90.....33700
97.....30456

48 CFR

223.....32736
252.....32736
909.....32674
923.....32674
970.....32674
1804.....30908
1834.....30909
1852.....30908
Ch. 20.....29220

Proposed Rules:

5.....33702
7.....33702
10.....33702
15.....33702
16.....33702
17.....33702
31.....32768
37.....33702
44.....33702
46.....33702
52.....32768, 33702
223.....32769
228.....29269
232.....29269
252.....29269, 32769
1832.....30933
1852.....30933

49 CFR

24.....33264
107.....30620, 33416
171.....30620, 33416
199.....31279, 33392
214.....29561, 30429
219.....31278
245.....30596
383.....31454
390.....33276, 33638
391.....31277, 31458, 33276
395.....33638
571.....30161, 30911, 30917, 31563, 32738, 32902
586.....30917
Ch. VI.....30880
665.....33394
1057.....32905
1109.....32451
1201.....31754

Proposed Rules:

24.....33164
71.....29270
390.....33712
394.....33712
396.....29457
552.....29459, 31348
571.....30189, 32942
Ch. X.....33166
1037.....31488
1039.....30709, 31489, 33478
1160.....31165, 31693
1207.....33314
1249.....33314

50 CFR

17.....30164
23.....33450
215.....33900
217.....33452
227.....33452
260.....30923, 33456
285.....29655, 32905
299.....33649
630.....29447, 32453, 33458
646.....33127
649.....30684
655.....32923
658.....29447
661.....31666, 32741, 32924, 33128, 33279
663.....32181, 32924
672.....29222, 29223, 29806, 30168, 30685, 30924, 31331, 31971, 32453, 33279, 33902
675.....29223, 29656, 29806, 29807, 30924, 31129, 32925, 33902, 33904

Proposed Rules:

14.....30457
16.....29856
17.....30191, 31168, 33478
20.....30884
217.....30196, 30709
222.....30709
227.....30196, 30709
603.....30458
611.....29692, 29856, 32952, 33716
640.....32956
642.....33924
663.....30534, 32499
672.....31563
675.....31563
678.....29859
685.....29692, 32952, 33716, 33926

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 29, 1992